



COMMUNITY
SEPTIC MANAGEMENT
PROGRAM

PROJECT MANUAL

Table of Contents

TAB NO.	
1.	Community Septic Management Program - Description
2.	Community Septic Management Program - Planning Guidance
3.	Program Application and Instructions
4.	Betterment Agreements
5.	Project Management Using Betterment Agreements
6.	Sample Forms: Betterment Agreement
7.	Notice of Betterment Agreement
8.	The “Betterment Bill”
9.	Project Approval Certificate and Project Regulatory Agreement
10.	State Revolving Fund Loan Procedure
11.	Resources and Tools for Program Management
12.	Frequently Asked Questions
13.	<u>APPENDICES</u>
I.	Sample Application for Homeowners
II.	Model Plan - Local Septic Management Program
III.	DOR Bulletins/Program Accounting
IV.	FORMS: Payment Requisition Form (T5-1000), Quarterly Reports

COMMUNITY SEPTIC MANAGEMENT PROGRAM - DESCRIPTION

Across Massachusetts, failing cesspools and septic systems are a leading cause of contaminated drinking water, tainted shellfish beds, weed-choked lakes and ponds and polluted beaches. In 1995, the Department of Environmental Protection with the help of key stakeholders revised Title 5 of the State Environmental Code to protect the health of Massachusetts citizens and the state's natural resources. This was the first time the state's septic system rules were revised since 1978. The revised code reflects a new understanding of the impact of septic systems on the subsurface environment, groundwater and surface waters like rivers, lakes and ponds. Title 5 requires inspection of private on-site sewage disposal systems before properties using them are sold, expanded or undergo a change in use. Systems deemed to be failed are required by Title 5 to be repaired, replaced or upgraded to protect the public health and the environment.

To help homeowners comply with the revised Title 5 rules, the Commonwealth has invested approximately \$164 million in various assistance programs aimed at either upgrading septic systems, building community systems, or new sewers. The Community Septic Management Program (CSMP) was developed through the collaboration of the Department of Environmental Protection (DEP), the Executive Office of Administration and Finance, the Office of the State Treasurer, and the Department of Revenue. Funding for the Program was provided by the 1996 Open Space Bond Bill which authorized DEP to spend \$30 million to assist homeowners comply with Title 5. DEP will use the appropriation to fund loans to communities through the Massachusetts Water Pollution Abatement Trust (the Trust). Using the State Revolving Fund (SRF) loans from the Trust, communities can provide betterment loans to assist homeowners who must address septic system failures. Betterment loans are described in greater detail under Tab 4 and 5.

This manual is a comprehensive step by step guide to help communities implement the Community Septic Management Program at the local level. Implementation includes the development of a local inspection or management plan and a betterment loan program administered by the Board or Department of Health which will provide direct financial assistance to homeowners with failed septic systems. The effectiveness of the Community Septic Management Program's implementation depends largely on the initiative of local officials and their sensitivity to the needs and concerns of homeowners and the community.

DEP has provided an electronic version of this manual on its Home Page on the World Wide Web. (<http://www.magnet.state.ma.us/dep/>)

Program Options

The Community must identify and devise a plan to protect environmentally sensitive areas in the community from septic system contamination. Such plans always include the creation of a data base and the provision of financial assistance to homeowners using betterments. As discussed in these materials, the Community may devise either a Community Inspection Plan (“Option a”) or a Local Septic Management Plan (“Option b”). Communities are eligible for a planning grant and a SRF loan of \$200,000 with either Option “a” or Option “b.” The SRF loan proceeds may be used to provide betterment loans to homeowners and for eligible administrative costs.

COMMUNITY SEPTIC MANAGEMENT PROGRAM PLANNING GUIDANCE

Program Elements

- ◇ **Local Program Development Grant**
- ◇ **State Revolving Fund Loan (\$200,000)**
- ◇ **Community Inspection Plan or Local Septic Management Plan**
- ◇ **Betterment Program**

The Community Septic Management Program provides financial and management tools for local boards of health to identify and protect environmentally sensitive areas in communities. The Community is provided with pre-loan financial assistance in the form of a grant to identify and rank environmentally sensitive areas and to create a plan to protect such areas from septic system contamination. The grant is available after submission of the application set forth in this manual. After the development and acceptance by DEP of the local program and borrowing authorization by the Town Meeting or City Council, the community can provide financial assistance and incentives to homeowners with failed septic systems in environmentally sensitive areas and in the community at large.

Local implementation of the **Community Septic Management Program** must include two (2) program elements:

Community Inspection Plan (Option “a”) (see this section) which meets the requirements of 310 CMR 15.301(4)(c) and is approved by DEP;

OR

Local Septic Management Plan (Option “b”) (see this section) which identifies, monitors and addresses the proper operation, maintenance and upgrade of septic systems in a comprehensive manner,

AND

Financial Assistance The community provides financial assistance to homeowners for the repair, replacement or upgrade of failed septic systems using betterment agreements under G.L. c. 111 s. 127B 1/2. (See Tabs 4, 5, 6, 7 and 8)

A *Community Inspection Plan* requires the regular inspection of all septic systems (at least once every 7 years) and allows the systems covered by the Plan to be relieved of the inspection upon property transfer requirement in Title 5. In comparison, *Local Septic Management Plan* does not require the periodic inspection of systems (nor relieves homeowners of system inspection upon transfer) and allows for a wide range of septic system management approaches. Communities may use either approach to identify and

address septic system failures. To develop and implement either Plan, a grant is provided by the Department and the Trust.

Schedule for Planning Assistance Within four (4) months from the date of signing the planning grant agreement with the Trust, the participating Community must submit its Local Septic Management Plan or Community Inspection Plan for DEP's review and initial approval/comment. The proposed plan must be modified in accordance with DEP's comments, requirements and time frame.

After acceptance of the borrowing element of the Community's Plan at Town Meeting or by the City Council, the Community should forward the Plan to DEP for final review and approval with the **Program Application** (see Tab 3). The Program Application is brief and designed to notify DEP that the Plan has local approval and that **Local Authorization** to borrow the funds has been voted by the Town Meeting or City Council (for sample Authorization language contact your regional coordinator). DEP will certify the Program approval and acceptance of the Community Inspection Plan or Local Management Plan by forwarding a **Project Approval Certificate/Project Regulatory Agreement (PAC/PRA) to the Trust** (see Tab 9). The PAC/PRA is an agreement between the Department and the Community and is signed by the DEP Commissioner and Chief Executive Officer of the Community. The PAC/PRA will incorporate DEP's program requirements (e.g., the approved local Plan and Betterment Loan Program), and sets the schedule and budget for implementing the program within the Community. The Community will then be authorized to enter into a **SRF Loan Agreement** with the Water Pollution Abatement Trust (see Tab 10 for Process. Sample Loan Agreement may be obtained from the Trust at appropriate time). The Community will have at least 18 months to disburse the SRF Loan to homeowners for septic system repairs, replacements, and upgrades through its local program.

Loan Administration and Project Management All communities will receive SRF loan installments to keep pace with the schedule set forth in the PAC/PRA. Upon the completion of each betterment (i.e. each homeowner project) the community must submit to DEP a - Title 5 Certificate of Compliance. Copies of the betterment agreements and supporting documentation must be available for inspection and audit by DEP. Within six months of the first installment payment DEP will review the program's progress. Each municipality must also submit quarterly reports to the Department of Revenue Division of Local Services.

Municipal Program Completion Completion of the Project will occur when a community expends the full \$200,000 SRF loan proceeds for activities eligible under the Program and the Project Regulatory Agreement/Project Approval Certificate (PRA/PAC) or so much of the funding as is expended within the project period or if DEP determines that the Plan will not move forward in a timely manner. When implementation of a Plan is complete, a Community is required to certify that the program has been completed according to the provisions of the PRA/PAC.



Guidelines for Implementing Community Inspection Plans

310 C.M.R. 15.301(4)

I. Introduction

The Community Inspection Plan is one of two plans communities can choose when implementing the Community Septic Management Program. The following guidelines will help local and regional governmental agencies prepare Community Inspection Plans and sets forth the minimum requirements necessary for DEP approval.

Title 5 requires the inspection of on-site sewage disposal systems at the time of transfer of title of the facility served by the system, unless "the facility is subject to a comprehensive local plan of on-site septic system inspection approved in writing by the Department and administered by a local or regional governmental entity, and the system has been inspected at the most recent time required by the plan." [See 310 CMR 15.301(4)(c)]. Under a Community Inspection Plan, a community must inspect all septic systems in the areas of the community subject to the Plan at least once every seven years. If the community implements a Community Inspection Plan, homeowners within the plan area are not required to have a septic system inspection when transferring title. Such a Community Inspection Plan:

"may prioritize systems to be inspected on the basis of proximity to water resources, soil or geological conditions, age or size of systems, history of performance, frequency of pumping or other routine maintenance activity, or other relevant factors, and may establish different schedules and frequency of inspection on the basis of such criteria, provided that all systems are inspected at least once every seven years by a System Inspector approved by the Department."

II. Minimum Requirements

A. Scope and Basis for the Plan

1. As required by Title 5, the proposed inspection plan must be "comprehensive" in nature. While this requirement does not mandate that the inspection plan be community-wide (in the case of a city/town) or region-wide (in the case of a regional entity), it does require the proponent to analyze and document the feasibility of implementing such a program and explain the reasons for proposing a plan of lesser scope (e.g., prioritizing a neighborhood with failed septic systems which impact a nearby lake or pond).
2. The proponent of the proposed Community Inspection plan must document the basis for scope and requirements of the plan (e.g., in the prioritization of the areas covered by the plan; the frequency of inspections, the nature and scope of interim maintenance measures, the implementation and administration of the plan, etc.).

B. Prioritization of Areas to be Inspected

1. The Community Inspection plan (the plan) must prioritize areas to be inspected based on the consideration of the following factors:

(a) Areas with high system failure rates attributable to:

- o high ground water;
- o poor soils (e.g. showing evidence of breakout);
- o frequent pumping of systems required;
- o proximity to water resources - e.g., systems located in close proximity to a surface water supply or tributary, or to private wells, systems located within a Zone I of a public well; cesspools or privies located in close proximity to a surface water or tributary, a bordering vegetated wetland or a salt marsh; large systems located within a nitrogen sensitive area or in close proximity to a surface water supply or tributary; and
- o other Title 5 failure criteria.

(b) Areas of particular concern due to:

- o high groundwater;
- o poor soils;
- o high density of private wells;
- o within a Zone II or a Zone A;
- o concentration of old systems and/or cesspools and privies; and
- o close proximity to contaminated or degraded shellfish beds, nitrogen sensitive embayment, or other sensitive water resources (e.g. recreational lakes and ponds).

(c) Areas of high system density not included in (a) or (b) above.

(d) Areas that do not appear to pose a threat to the public health or the environment.

2. The plan must include a map on which is depicted the above proposed prioritization of areas to be inspected. Such map may be created as an overlay of a USGS map showing physical features and highlighting water resources (e.g. lakes, ponds, public water supply wells, reservoirs, Zone IIs, Zone A & B, wetlands, shellfish beds, etc.).
3. The plan must include a narrative describing prevailing site conditions in the areas which have been designated for inclusion in plan. If the area does not encompass the entire community (or region), the narrative must also contain a comparative description of the site conditions existing outside of plan area (e.g., the narrative might explain that the area within plan consists of small lots close to pond, and that the area outside of plan consists generally of large lots with well drained soils).
4. The plan must describe the information and process from which the proposed inspection prioritization scheme is based (e.g., review of existing files in Board of Health, DPW, water/sewer department; survey of property owners; site visits by health agent/staff).

C. Proposed Schedule for System Inspections

1. The plan must identify the proposed schedule for system inspections, consistent with the requirements of Title 5. As provided for in 310 CMR 15.301(4)(c), all systems covered under the plan must be inspected at least once every seven (7) years by a DEP approved Septic System Inspector. The plan may identify different inspection frequencies for different categories of systems, based, e.g., on the area the system is located in or on the type and age of the system. In all cases, the plan must adequately explain and support the selected inspection schedule(s).
2. If applicable, the plan must also explain how large systems (discharging in excess 10,000 GPD), shared systems, innovative and alternative systems and other systems requiring periodic inspection under Title 5 are to be integrated into the plan. All system inspections must be performed in accordance with 310 C.M.R. 15.302 ("Criteria for Inspection") and all applicable DEP guidance and training materials.

D. Interim Maintenance Measures

The plan should describe any proposed interim maintenance measures (e.g., pumping and/or other routine maintenance activities), water quality monitoring or reporting requirements to be required of property owners whose septic systems are covered by the plan.

E. Implementation and Administration of the Plan

1. The plan must describe, with supporting documentation, the legal and jurisdictional basis for the establishment and enforcement of the Community Inspection plan (e.g., enactment of a BOH regulation or a Town bylaw or City ordinance). Such plan must

- include legally enforceable requirements that: (a) all systems covered by the plan shall be inspected in accordance with the schedule in the DEP approved plan; (b) all inspections must comply with the inspection criteria in Title 5 and be performed by DEP approved Septic System Inspectors; (c) at the initiation of the plan: (1) a notice must be recorded on the properties deed served by the septic systems covered under the plan, stating the existence of the DEP approved inspection plan, its applicability to the property, and the requirement that the system be inspected in accordance with the schedule outlined in the DEP approved plan; **or**, (2) some other mechanism as approved by DEP for giving notice of the above described information to subsequent owners and other interested parties.
2. The plan must set forth a system for monitoring: (a) whether inspections are being performed in accordance with the DEP approved plan (using a DEP approved data base system for tracking septic system inspections); and (b) whether failed systems are being upgraded in accordance with the applicable time frames in Title 5.
 3. The plan must include:
 - (a) Proposed source of funds for administration and identification of the proposed revenue sources (e.g., fees, inspection charges) for inspections;
 - (b) Proposed budget for administration and inspection;
 - (c) Staffing plan for program management. An identification of the personnel to be used to inspect the systems (and whether such personnel will be staff of the city/town and/or private inspectors retained by the septic system owners and/or the city/town), as well as identification of other staff who will oversee the implementation and ongoing administration of the inspection program;
 - (d) Outreach and education strategy. A description of the proposed public education and outreach efforts which must be integrated into the implementation of the plan.
 5. The plan must include an annual status report by the city/town, to be submitted to DEP within 30 days of the end of the State Fiscal year.
 - (a) This plan should include the results of the above required monitoring system stating: (1) the total number of systems inspected, categorized by uses (e.g., residential, commercial, institutional, school), flows, and age (if available), and (2) the number of failed systems discovered during inspection, broken down by the above categories;
 - (b) the number, use, flow, and age and compliance status of all systems required to be upgraded in compliance with the applicable time frames in Title 5; and
 - (c) identification of those systems which are not in compliance with the requirements of the plan, and a description of the actions taken by the city/town to address such noncompliance.

In addition, upon completion of the first time inspection of all the systems covered by the plan, the city/town shall submit a report to DEP evaluating the effectiveness of

the plan and determining whether any modifications to the scope and requirements of the plan, consistent with Title 5 and applicable DEP Guidelines, are warranted.

6. The plan must include an opinion of city/town legal counsel certifying that the plan and its requirements have been legally adopted and are enforceable by the city/town.

Guidelines for Implementing Local Septic Management Plans

I. Introduction

Under the Community Septic Management Program, Communities may choose to develop a Local Septic Management Plan which identifies, monitors and addresses the proper operation, maintenance and upgrade of septic systems in a comprehensive manner. Unlike a Community Inspection Plan, a Local Septic Management (LSM) plan does not meet the requirements of 310 CMR 15.301(4)(c). As a result, septic systems covered by a LSM plan must be inspected prior to property transfer as required by Title 5.

At a minimum, a Local Septic Management plan must include, but is not limited to, the following elements:

- (a) identification and prioritization of areas containing systems warranting more regular monitoring and maintenance and/or upgrade, based on existing and new information and data, as appropriate (e.g., voluntary inspections);
- (b) development of a DEP approved data base system for tracking the inspection of septic systems and whether failed systems are being upgraded in accordance with the time frames outlined in Title 5; and
- (c) development of requirements and a schedule for periodic pumping and other routine maintenance of systems covered by the program.

Once the Project Approval Certificate/Project Regulatory Agreement is issued to the community and the Loan Agreement with the Water Pollution Abatement Trust is finalized, the Community may commence activities under its Septic Management plan. Activities should include:

- Creation of an administrative structure to manage the program (administrative tasks may be delegated to a regional planning agency or contractor or shared among communities)
- Prioritization of environmentally sensitive or threatened areas
- Public Notification
- Priority Lists
- Homeowner Selection Criteria for loans
- Development of Betterment Agreements

- Project administration for repair of septic systems (procurement, funding and oversight)
- Administration of loan repayment

A. Program Administration

Administrative responsibilities and tasks for the program should be defined as a part of local program development. Subcontracting for the oversight of the program or specific program tasks to a separate entity, such as regional planning agency, county government, or a private consultant is permitted. Participating communities are responsible for preparing and processing legal agreements and contracts to procure such services, when necessary. Since formal Request for Services or Request for Responses may be necessary to procure services from private contractors, the Town Counsel, City Solicitor or Chief Procurement Officer should be consulted to ensure compliance to applicable state laws.

B. Prioritization of Environmentally Sensitive or Threatened Areas

The Board of Health together with other community officials should identify and prioritize environmentally sensitive or threatened areas. All such areas presently or potentially impacted by failed, substandard or poorly sited septic systems should be identified using a numerical ranking system established by the municipality. The most seriously impacted areas shall be ranked number one, and so on in descending order, until all areas are ranked. Similar priority areas may be afforded equal ranking.

Each community must determine the level of community and citizen involvement necessary to establish environmental priorities. Keep in mind that because of funding limitations only the higher priority areas in a community are likely to receive the initial funding under the Community Septic Management Program.

C. Public Notification

Public awareness and support of the Community Septic Management Program is likely to be an important to the success of the program in the community. It is the responsibility of each community to inform homeowners of the goals of the in their town/city and the availability of financial assistance to homeowners that need it.

Notice of the Program can be provided in the following media:

- notice in local newspapers (through legal and other advertisements, press releases, newspaper articles and letters to the editor)
- discussions in public meetings
- public access cable television shows

- local commercial radio and television shows
- direct mailings to homeowners in priority areas
- adding program brochures along with municipal utility bills
- posting in public places (town hall, community center, library, etc.)

Each community is responsible for notifying the public that loan applications will be received during a specified time.. The notice should state the period for which applications will be accepted, areas within the town that are eligible for funding (if applicable) and the contact person(s) for information within the Board of Health or other designated agency or administrator. DEP recommends that each community establish an annual time period for accepting applications(e.g. January 15 to February 15.) Applications received after the date can be put on a waiting list. Some communities have found that ‘preliminary applications’, requesting only name, address and telephone number are more successful than detailed loan applications, at least prior to establishing project priority lists. Interest in the program will vary from community to community In some communities the local program will not require much effort to attract ‘customers’. Others will need extensive ‘marketing’ to ‘get the ball rolling’.

A process for receipt of applications and record keeping should be established. Bear in mind that any personal financial information of applicants should be protected and kept in a secure filing system. Suggested Application Forms are provided at Tab 13, Appendix I of this manual. Cities/Towns may use or modify these forms. To avoid the appearance of arbitrariness, applicants must be informed of the criteria for awarding betterment loans well in advance of the of the award selection.

D. Determining Priorities

The Board of Health or its consultants should make an approximate determination of the number of septic systems that can be repaired with the available program funds. Applications should be screened for location in priority areas and ranked according to reestablished criteria. Applicants whose property poses equal environmental or public health problems should be ranked on the basis of income and funding needs. Betterment loans cannot be awarded to any person or family with a gross annual income in excess of \$150,000 prior to DEP approval. Properties in the community known to pose a current and direct threat to public health and the environment may also be afforded a higher priority in the ranking system. If there are not enough applications for properties in the priority area(s), the board of health can choose to extend the time to apply or award betterment loans based on date of the filing of the application. This criteria should be established prior to making betterment awards to avoid the appearance of arbitrariness

E. Priority Lists

After the application deadline has passed, a ‘Priority List’ may be prepared. A ranking of applications for assistance, based on the Board of Health’s previously established

criteria should be made. Communities may wish to develop a “scoring” approach which awards extra “points” to those applicants in previously established environmental priority areas. Applicants with equal scores may achieve priority by an earlier application date. Communities may consider income when scoring otherwise equally ranked applications.

The final Priority List may include the following information:

- name of applicant
- address of applicant
- environmentally sensitive area (Yes/No)?; If yes, identify the area
- ranking
- type of project (repair of septic system, shared system, sewer hookup, etc.)
- estimated project cost/betterment amount

Steps to creating a group of projects to receive Betterment Loans can be as follows.

1. Establish deadline for applications.
2. Rank project according to environmental impact.
3. Apply level of funding to the list of projects to establish a cut off on the priority list.
4. Reserve 10% for contingency.
5. Certify noncompliance with Title 5.
6. Create a waiting list from remaining pool of projects to rank project for future funding
7. To bypass projects selected for funding, use the waiting list to choose the next highest rank project

F. Homeowner Selection

After the Priority List is finalized, municipalities can offer to enter into Betterment Loan Agreements with homeowners on the priority list. When communities issue an offer to enter into a Betterment Agreement with a homeowner, the offer should contain a strict time limit for response. The offer should explain that there is a waiting list and request that the Board of Health or its administrator be advised immediately if the Homeowner is no longer interested in obtaining a Betterment Loan. It is strongly advised that a “grace period” be built in so that otherwise qualified applicants are not denied funding because of unforeseen circumstances (e.g. illness, vacation, etc.) Once the grace period has expired without a Betterment Agreement being created, the homeowner should be notified in writing advising the Homeowner that he or she has been moved from the projects to be funded list to the waiting list. After this notice, the Priority List may be revised to ‘move up’ one or more Homeowners from the Extended List.

Once an offer to enter into a Betterment Agreement is accepted, copies of the relevant Betterment Documents should be provided to the Homeowner. The Program Administrator should be prepared to answer questions regarding what costs are eligible

for funding, when and how money will be made available and what documentation must be provided to satisfy the program legal requirements. Setting time tables and deadlines is necessary to ensure that Betterment Agreements are promptly executed and that septic system repair and upgrade projects are commenced and completed on time.

The program administrator should review each form carefully to ensure that all of the required information is provided by the homeowner. Keep in mind that Betterment Agreements work like construction loans: money is disbursed to cover costs actually incurred to perform the design, repair or upgrade work. The total actual costs will not be determined until the project is complete. The Betterment Agreement forms provide that funding may be available for site investigation, design and repair or upgrade of a septic system.

It may be useful for the first few projects to have the City Solicitor or Town Counsel review the legal requirements to ensure that the forms are executed in compliance with Massachusetts law and that a valid Betterment lien is established. However, it is not likely that each Betterment Agreement will require legal review.

G. Elderly Deferrals

The Board of Health can enter into “Deferral and Recovery Agreements” (“DRAs”) with eligible homeowners. Such agreements allow the homeowner to postpone payment of the betterment provided that the provisions of the applicable statute are complied with. The provisions include a requirement that the homeowner be eligible for a real estate tax exemption under clause 41A of Section 5 of Chapter 59 of the General Laws. The Board of Health must forthwith record at the registry of deeds a statement (notice) of the Agreement in order for it to be effective against third parties. The statute provides that if the applicant qualifies for entry into a Deferral and Recovery Agreement, the Board of Health *shall* grant it. However, a new application for a Deferral and Recovery Agreement must be filed each year with the Board. In addition, the Board must annually advise the Board of Assessors of the charges to be deferred.

Before advising homeowners that entry into Deferral and Recovery Agreements is available, the Board of Health must verify that the town has “accepted” the provisions of General Laws Chapter 80 s. 13B at a Town Meeting or by vote of the City Council. Ask the Town Clerk or Town Counsel to verify whether the town has in fact accepted this statute. A majority vote is necessary to accept the provisions of the statute.

Chapter 59 sets out the following requirements for eligibility to enter into a Deferral and Recovery Agreement under Chapter 80 section 13B:

A. Age and Status:

- I. Owner is single or, if married, the owner's spouse is not an owner. Owner must be 65 years or older by July 1 in the year in which application for the agreement is made or;
- II. Owner and spouse are joint owners. Either spouse must be 65 years or older by July 1 of the year in which application is made.

B. Ownership and Occupancy:

The applicant must have owned and occupied as a domicile any real property in Massachusetts (including the present property) for five (5) years. Massachusetts must have been the applicant's domicile for the preceding ten (10) years.

C. Gross Income:

Gross income from all sources in the calendar year preceding the year in which application is made may not exceed \$20,000.00. A town may adopt a higher maximum qualifying gross income amount but such amount may not exceed \$40,000.00.

A surviving spouse inheriting the property must have occupied it or other real property in Massachusetts for five (5) years. The surviving spouse who otherwise qualifies may continue to defer payment of the betterment. However, the total apportioned and deferred betterment payments (and taxes if applicable), together with interest accrued, may not exceed fifty (50%) percent of the owner's interest in the assessed value of the property.

Anyone having a legal or beneficial interest in the property (including a lender holding a mortgage) must approve of the Deferral and Recovery Agreement. The Deferral and Recovery Agreement form contains a section for such persons or entities to sign off.

Payment of a deceased spouse's deferred betterment charges shall not be required during the life of a surviving spouse who inherits the property and who enters into a Deferral and Recovery Agreement.

Important! The community remains responsible for repayment of monies loaned by the Trust. If repayment by the homeowner of the costs associated with septic system betterment agreements is to be deferred, adequate planning for alternative means of repayment to the Water Pollution Abatement Trust must be made.

II. Program Costs, Homeowner Repayment and SRF Loan Repayment

General

The Community Septic Management Program anticipates that repairs and upgrades of failed septic systems will be performed by private contractors. All design professionals (Professional Engineers and Registered Sanitarians), site investigators (i.e. soil evaluators) and construction contractors must have the qualifications and licenses required by Massachusetts law and carry adequate liability and other appropriate insurance. All work must conform to the requirements of 310 C.M.R. 10.00 (Title 5) and any applicable requirements of the state plumbing and building codes and other applicable laws and regulations. All required permits and licenses must be obtained in connection with repair and upgrade projects performed pursuant to the program. Prevailing wages are not required to be paid.

The steps to be undertaken to ensure that the work is performed adequately are described in Tab 5.

A. Administrative Costs

All communities must submit an administrative budget prior to final approval of the project. Eligible costs may be drawn down out of the preloan assistance grant or with prior approval from loan proceeds. The Board of Health should work with the treasurer to ensure that requisitions for administrative costs, as well as other program costs, are handled promptly and efficiently and documented appropriately. Proceeds of the Trust loan (not to exceed 2.5% of the loan amount) may be used for local administrative costs (and other costs of issuance related to the Trust loan).

B. Eligible Betterment Project Costs

Betterment Agreements made pursuant to G.L. c. 111 s. 127B 1/2 can fund septic system repair and upgrade projects performed by the homeowner. Funds may be used for all costs necessary to repair or replace a failed septic systems by renovating the existing system; hook-up to existing sewers; or replacing traditional septic systems with an alternative system approved pursuant to Title 5.-

The following costs are eligible for funding under the Program:

- (a) performing soil and percolation tests and other necessary site analyses;
- (b) specification of the Failed System components to be repaired, replaced and/or upgraded;
- (c) design of the System or components thereof to be repaired, replaced and/or upgraded;
- (d) obtaining all applicable federal, state and local permits and approvals required to complete the Work;

- (e) seeking bids and awarding contracts for assessment, design, consulting and construction work and materials in accordance with applicable laws, regulations and requirements;
- (f) minimizing any disruption of utility service, and reasonably restoring the Property to as near its original condition as practicable; and
- (g) engaging such other services and procuring such other materials as, within the reasonable discretion of the Board of Health, shall be necessary to complete the Project in a good and workmanlike manner.
- (h) professional services for project oversight and management

Other costs, directly or indirectly related to the project may be eligible. Before the commencement of a project, a scope of work should be agreed upon by the Board of Health or its administrator and the homeowner. In the event that unanticipated circumstances arise (e.g. the discovery of a boulder, ledge or other subsurface condition), the board may increase the loan sum provided that the work is reasonable related to the accomplishment of the project.

C. Homeowner Repayment of Betterment Loans

The Board or its administrator together with the municipal treasurer and accountant must set up a separate account for each Betterment project. After all betterment loan funds have been disbursed to a homeowner, a final accounting must be made. The Board of Health must certify the total amount funded for the project to the municipal assessor. The assessor, in turn, commits for collection to the tax collection the total project amount. In general betterment loans, together with accrued interest, are repaid through the Community's tax collection. The DOR/Division of Local Services accounting and collection requirements are set forth in a DOR Bulletin dated August, 1997. (See Tab 13, Appendix III).

D. Repayment of SRF Loan

Each municipality must authorize borrowing funds from the Massachusetts Water Pollution Abatement Trust ("WPAT") through town meeting or city council vote. A vote of 2/3 of the member voting is necessary. Once borrowing authorization has been obtained, the municipality can seek DEP approval of the municipality's Community Inspection Plan or Local Septic Management Plan. After DEP approval of the Local Plan, the chief executive officer of the municipality can execute a Loan Agreement with the WPAT. The Loan Agreement sets forth the terms and conditions of the State Revolving Fund ("SRF") loan made by the WPAT to the municipality. Each Community assumes full responsibility for repaying monies borrowed from the WPAT. However, the repayment obligation is secured with the betterment agreements made with homeowners. DEP recommends that the Board of Health and/or its consultants meet with the municipal finance 'team' (town collector/treasurer, accountant, and assessor) to ensure the smooth implementation of the local program and appropriate fiscal accounting. Communities will commence repayment

approximately two years after the loan agreement is made. - The municipality need only repay monies actually drawn down to fund betterment loans.

The Community Septic Management Program anticipates that Communities will charge homeowners either two percent (2%) or five percent interest (5%) on Betterment Loans at the option of the Community. Interest accrued on Betterment Loans may be used for future administrative costs. Principal and interest payments are credited to a special 'receipt reserved' account reserved for future project costs. The repayments are not to be credited to the Community's general fund account. Monies repaid to the Community may be 'reloaned' to fund additional betterment projects provided that the local Plan is reauthorized by the Town Meeting or City Council on an annual basis. The treasurer and accountant prepare a quarterly report detailing betterment loan activity and anticipated project funding for the next quarter. The report is provided to WPAT, DEP and DOR/DLS. The loan agreement between WPAT and the Community will provide a Final Disbursement Date by which all SRF loan funds must be expended for homeowner septic repairs or administrative costs.

PROGRAM APPLICATION AND INSTRUCTIONS

1. General Information (see form on P.23)

A-G. *For the Community/Applicant* - Provide the name and address of the Applicant which will undertake the Project. List the name, title, telephone number and fax number of the contact person for the Project.

For the Program Administrator- If the Applicant has or will be contracting with another entity (public or private) to assist it in the Project administration, provide the same information for the Program Administrator.

H. Identify the Applicant's Department of Revenue ("DOR") identification number (i.e., the ID number used for all state revenue aid programs).

2. Type of Assistance

Identify the applicable financing option and Loan amount: - \$200,000;

Select one of the Community repayment options (5, 10, 15 or 20 years).

3. Local Authorization and appropriation

The Applicant must demonstrate by means of a local authorization appropriation that it has sufficient approval to borrow funds to cover project costs.

4. Project Description

Statement of Program Objectives: The Applicant must include and highlight any updated information relevant to the Project, particularly proposed changes to the Project budget and schedule.

5. Certification

The Application certification must be signed by the authorized representative of the Applicant. The Applicant must attach a local resolution designating by title the official (e.g., Mayor, City or Town Manager, Chairman of the Board of Sewer Commissioners, Board of Selectmen) to act as the representative of the Applicant to sign for, accept, and take whatever action is necessary relative to the Project.

In addition the community will have to fill out a form for the Authority to File. The city council will generally name the authorized representative for the city. An action by town meeting will name the appropriate town body, such as the board of selectmen or the board of health, which will, in turn, name the authorized representative for the town. If the Authority to File statement identifies an office rather than an individual, the Applicant must submit a certified statement naming the individual currently holding the office.

The Authority to File statement must also be certified, either by a certification at the bottom of the statement or by submitting a separate certification. A sample form for Certifying the Authority to File may be obtained from your regional coordinator.

Finally, in the event the authorized official is replaced while the project is still active, the Applicant must submit a certified statement naming the new incumbent and the effective date of his or her appointment.

Application

1. General Information

1. For the Community/Applicant:

A. Community/Applicant:

B. Street

C. City, State, Zip Code

D. Contact Person

E. Title

F. Telephone Number

() _____

G. Fax Number

() _____

H. Department of Revenue Identification Number

2. For the Administrating Entity:

A. Administrating Entity

B. Street

C. City, State, Zip Code

D. Contact Person

E. Title

F. Telephone Number

() _____

G. Fax Number

() _____

H. Dept. of Revenue Identification

2. Terms of Loan Assistance

A. (\$200,000) B. Repayment Period: 5 years___ 10 years ___15 years
20 years___

3. Local Appropriation

Attach a certified copy of town meeting or city council vote, as applicable.

4. Project Description

Statement of Program Objectives For *(a) or (b)*: Attach a copy of the Local Septic Management Plan or Community Inspection Plan, as approved by DEP.

The Applicant must include and highlight any updated information relevant to the Project, particularly proposed changes to the Project budget and schedule.

5. Certification

In submitting this Application for Loan assistance under the Local Septic Management Program, the Applicant certifies to the Department of Environmental Protection ("DEP") as follows:

"To the best of my knowledge and belief the information provided by the Applicant in this Application is true and correct, and the documentation submitted by the Applicant is complete and responsive to the Application and has been duly authorized by the governing body of the Applicant.

The applicant further assures DEP that it possesses the legal authority to apply for the Loan, and to finance and implement the proposed Project. A resolution, motion, or similar action has been duly adopted or passed as an official act of the Applicant's governing body, authorizing the filing of this Application. The same resolution, motion, or similar action is directing and authorizing the person identified below as the authorized representative of the Applicant to act on behalf of the Applicant in connection with this Application and to provide such additional information as may be required to receive Loan assistance."

Authorized Representative (Type)

Title

Signature of Representative

Date



BETTERMENT AGREEMENTS

M.G.L. c. 111 s. 127B 1/2

Chapter 80 of the General Laws of Massachusetts (the original "Betterment Law") defines a "Betterment Assessment" as a charge imposed on real property ... which receives a benefit ... from a public improvement made by ... order of a board of officers of the commonwealth, a county, city, town or district. Traditional betterments are imposed by municipalities to pay for improvements such as roads, sidewalks and sewer lines. The innovative use of the betterment concept in the "Betterment Bill", General Laws, c. 111, s. 127B 1/2, (See Tab 8) was inspired by the concept that in many towns septic systems serve as the wastewater disposal and treatment system in lieu of public sewers. By using a financing and repayment mechanism similar to the one used to construct public sewer improvements, a town can protect community water resources by providing financial assistance to homeowners and accelerating the pace of septic system repairs and upgrades.

Unlike traditional betterments, the betterment established under M.G.L. c. 111, s. 127B 1/2 is created through the agreement of the town and the homeowner. The "Betterment Agreement" provides an outline of the rights and responsibilities of the town and the homeowner in connection with the repair, replacement or upgrade by the town or by the owner of the homeowner's septic system. The basic elements of the Betterment Agreement are:

1. The town agrees to provide financial assistance to the homeowner to repair, replace and/or upgrade the septic system or to do the work on the homeowner's behalf.
2. If the homeowner performs the work, the homeowner agrees to repay, with interest, any money advanced by the town over an agreed upon period of time.
3. If the town contracts to perform the work, the homeowner agrees to repay the town's costs, with interest, over an agreed upon period of time.
4. The town establishes an account, similar to a loan, which will be paid on the homeowner's real estate tax bill.
5. The town may obtain a first priority "municipal lien" on the homeowner's property if the repayments are not made on time.
6. Even if the town contracts to perform the work, the septic system remains the property of the homeowner.

Betterment Agreements are the tools used by towns to provide financial assistance to homeowners. Betterments are not the source of the money the town provides. DEP recommends that Boards of Health work closely with the municipal treasurer and assessor before entering into agreements with homeowners to ensure that the Betterment Agreements are consistent with program requirements.

The Betterment Agreement specifies that the Board of Health makes a "finding" that the homeowner's septic system exhibits one or more of the failure criteria set forth in Title 5. It is not necessary for the Board to condemn the homeowner's property or issue an eviction order. However, the Board retains its powers under M.G.L. c. 111, s. 127B should the Board need to exercise them to protect public health and the environment. For example, the Board continues to have authority to order an emergency or interim repair of a failing septic system.

After the finding is made, the Board must enter an "order" requiring that work be accomplished to bring the system into compliance with Title 5. The order can be satisfied either by the homeowner, using financial assistance provided by the town or by the town itself on the homeowner's behalf. Notice of the Betterment Agreement is to be recorded at the Registry of Deeds to provide public notice of the existence of an agreement affecting the property. If the homeowner determines, after the site investigation or after receipt of the construction bids, that he or she is unwilling to proceed with construction, the order can be revoked. All costs of the town or money advanced must still be repaid by the homeowner. In addition, the homeowner is still required, pursuant to Title 5, to repair or upgrade the septic system within the parameters set by the regulation (i.e. timeframes, maximum feasible compliance, etc.).

If the homeowner is to perform the work, the Board of Health will approve the project by issuing a Disposal System Construction Permit and take the steps outlined in the Betterment Agreement (Owner to Procure and Contract) form. The model forms provide a framework for ensuring that costs are controlled, competent work is performed and completed, unexpected contingencies are handled promptly and insurance is in place in the event of an accident. Both homeowner and contractor are held accountable to complete the project.

The Betterment Bill statute makes the homeowner liable for the repayment of all direct and indirect expenses incurred by the Board of Health in connection with the repair, replacement and/or upgrade of the septic system.

The recent revisions to the Betterment Bill eliminate the need to obtain and record an estimate of costs. However, some homeowners may discover that the proposed construction costs (even with low interest rate financing) exceed their reasonable ability to repay the town. Therefore both Betterment Agreement forms provide that until construction commences, the homeowner is not under an obligation to proceed with the construction phase of the project. Once construction commences, however, the homeowner agrees to expeditiously complete the project and to use reasonable efforts to ensure that the contractor completes its obligations as well. -

Because unknown subsurface conditions may substantially increase the project costs, DEP recommends that a contingency reserve of up to 10% of the project costs be budgeted. The homeowner is obligated to repay only that part of the reserve actually drawn down to complete the project. Once the project is complete, any remaining reserve amounts can be released for use on other projects.

M.G.L. c. 111, s. 127B 1/2 makes it possible to "roll over" the personal obligation to repay the town for Betterments from the original homeowner to subsequent owners. The effect of the law is to release the homeowner from the personal liability for repayment when a purchaser agrees to assume the liability. A written release should be provided to the homeowner within a reasonable time after request. The Betterment Agreement forms detail the steps to accomplish the roll over and the conditions under which rollovers may occur.

The law provides that the municipal lien securing any payment due shall arise "on the day immediately following the due date of [the betterment] assessment or apportioned part of such assessment." If the apportioned payment is timely made, no betterment lien attaches to the property. Betterments under G.L. c. 111 s. 127B 1/2 operate in the manner comparable to sewer assessments under G.L. 83. Assessments under G.L. 83 also do not become liens until the day immediately following the due date of the assessment. Just like sewer assessments, it can be expected that lenders will require payment only of amounts due at the time the owner (or buyer) grants a mortgage.

A property subject to a betterment under M.G.L. c. 111, s. 127B 1/2 may be sold or mortgaged free of liens even though remaining betterment payments will come due in the future. This aspect of the law facilitates the transfer of properties improved with betterments by permitting the betterment to be amortized over the entire original term of the betterment agreement even if the property is conveyed to a new owner. As a result, property owners that experience financial hardship as a result of complying with Title 5 may have the full benefit of the financial assistance provided using betterments.

If a betterment lien arises, it jumps ahead of existing mortgage and other liens. Because of this feature of the law, lenders will want to know exactly how much is outstanding on the betterment account so that an "escrow" can be established and collected along with the monthly mortgage payment.

After the project is complete the total amount of financial assistance or total costs of the town incurred in connection with the project must be provided to the homeowner and certified to the Assessor. The Assessor will, in turn, take the required steps to include the yearly charge for the project in the homeowner's tax bill. As funds are repaid to the town, they are to be deposited into the special revenue account. The funds may then be used for additional septic system betterment projects.

The forms provided are intended to assist Boards of Health create Betterment Agreements with homeowners. The forms may be modified to suit particular circumstances and meet the needs of the town and homeowner. Boards of Health are encouraged to seek the input of municipal officials and others with experience providing assistance to homeowners and overseeing repair and upgrade projects.

PROJECT MANAGEMENT USING BETTERMENT AGREEMENT “

Betterment Agreement

Betterment Agreement projects anticipate that funding will occur in a single payment or design services and on a periodic basis for construction services and materials. The Betterment Agreement specifies that installment payments shall be made on the following basis:

(A) In the event the Owner seeks a contractor to perform field work and preparation of plans for the Project, the Owner is advised to solicit three estimates for the necessary field work and plan preparation from registered professional engineers or registered sanitarians and submit to the City/Town the Owner's choice of an engineer or sanitarian. The Board of Health may approve a payment not to exceed the amount of the selected estimate. A payment for field work and plan preparation can be made by check payable jointly to the Owner and the engineer or sanitarian upon presentation and approval of the invoices.

(B) The contractor must allow the homeowner 30 days for the remittance of all invoices charged to the betterment project. In a payment request, the contractor shall give notice to Owner specifying the cost incurred for the payment requested. Such notice shall consist of a detailed request describing the value of the completed items of work. The City/Town may issue a check payable jointly to Owner and Contractor, such check shall be forwarded by City/Town to Owner.

(D) Prior to making an installment payment, the Board of Health may cause the Project to be inspected to verify that the work items described in the request have been actually completed. In any case, the Contractor shall provide verification that the work referred to in the installment request has been completed in accordance with the approved plans.

(E) Prior to paying the final installment, the Contractor shall provide verification that all work has been completed in accordance with the approved plans, including a sworn statement that all materialmen, subcontractors and employees have been paid for work on or materials supplied for the Project and the Board of Health shall have issued a Certificate of Compliance for the Project.

The Board of Health is responsible for submitting Form DMS T5-1000 to the Department as betterment agreements are completed to request a payment requisition. Form DMS T5-1000 requires that a brief financial summary of each betterment project be provided. The Department reserves the right to review and audit individual betterment agreements for compliance with the Community Septic Management Program requirements. Based on the amount of completed individual betterments the Department will notify the Trust when the community will require a subsequent loan installment.

Phase I - Engineer Procurement

Procurement phases for design engineers may be as follows:

1. DEP provides a written bid package, which is modified to each communities requirements.
2. A pre bid meeting is held by the local BOH, and engineers are allowed to review site(s). DEP provides assistance, if required. Zoning or permitting issues for each qualified homeowner are discussed and quantified.
3. The package is advertised and bid in accordance with local and state bidding requirements.
4. Bids are opened, forwarded to legal counsel with recommendation and then awarded.
5. Engineering firm starts process of site and soil evaluations and preliminary design. Sites previously designed or with soil evaluations are prioritized.
6. Engineers are allowed to submit MONTHLY payment invoices in the following manner, based on bid items outlined in each contract.
 - a) Soil evaluations
 - b) Percolation tests
 - c) Draft design documents to Board of Health
 - d) Approved Design documents by Board of Health
 - e) Site inspection and general construction approval (as performed, per site)
 - f) Preparation of change orders
 - g) Preparation of Notice of Intent, Environmental Notification Forms, etc.
 - h) Zoning issues for each site
 - i) Costs for general installation and inspection are provided as an hourly estimate.

Phase II - General Contractor Procurement

Procurement procedures for general contractors may be as follows:

1. The DEP prepares a draft bid document, outlining the approved homeowners to have systems installed for review by the BOH.
2. Prepared plans and specifications are provided as part of the bid package for review by general contractors.
3. The package is advertised for bidding purposes as outlined by local and state legal requirements. A pre-bid meeting is conducted for general contractors.
4. DEP assists in preparation of addenda, as required.
5. The contract bids are opened and written recommendations forwarded to legal counsel.
6. General contractor work on the systems begins.
7. General Contractors are allowed to submit MONTHLY bills based on each bid item criteria, such as:
 - a) Installed systems
 - b) Approved change orders
 - c) BOH final approval for installation
 - d) Issued Certificate of Compliance

The Betterment Agreement specifies that the following items must be present in order for funding of the project to commence:

- (A) Inspection of the Failed System by a representative of Board of Health or by a DEP Certified Septic System Inspector, as deemed necessary by the Board of Health.
- (B) Submission by Owner or Contractor on behalf of the Owner of plans approved by the Board of Health for the Project. In the event Owner seeks an installment payment to pay for field work and preparation of plans for the Project, Owner shall (i) solicit three bids for the necessary field work and plan preparation from registered professional engineers or registered sanitarians, (ii) shall submit documentation of these bids to City/Town and (iii) specify Owner's choice of an engineer or sanitarian. Owner must provide a detailed explanation if the proposed engineer or sanitarian is other than the low bidder or if fewer than three bids are submitted. The Board of Health may approve an installment payment not to exceed the amount of the selected bid. An installment payment for field work and plan preparation shall be made by check payable jointly to Owner and the engineer or sanitarian and shall be payable upon presentation and approval of the selected bid.
- (C) Submission to Board of Health by Owner of three bids for the Project in accordance with the plans from licensed (including, but not limited to, a Disposal System Installer's Permit), insured, septic system contractors, which bids shall contain detailed breakdowns of the cost of the Project by tasks;

- (D) Approval by Board of Health of a contractor for the construction of the Project (the "Contractor") selected by Owner from these bidders. Owner must provide a detailed explanation if the proposed contractor is other than the low bidder or if fewer than three bids are submitted;
- (E) Approval by Board of Health of a Project Budget based on the bid submitted by the Contractor;
- (F) Execution of a construction contract between the Owner and the Contractor pursuant to the plans and specifications and approved by the Board of Health;
- (G) Issuance by the Board of Health of a Disposal System Construction Permit with respect to the Project.

The Board or its administrator together with the municipal treasurer must set up a separate record and accounting for each Betterment project. Once all project funds are disbursed to the homeowner, the Board or its administrator must certify the total amount funded for the project to the municipal assessor. The process for including this amount on the homeowner's tax bill is established in M.G.L. c 44.

Septic System Betterment Program Checklist

- ◇ Town establishes priorities for making Betterment Agreements with homeowners
- ◇ Financing for Betterment Projects may be secured through state funding, local appropriation, borrowing, bonding, or a combination of these sources
- ◇ Information on the Betterment Program is disseminated by town officials to the public
- ◇ Homeowners submit applications and petition Board of Health to enter into Betterment Agreements
- ◇ Board of Health reviews applications and develops a list of eligible homeowners
- ◇ Board of Health selects eligible homeowners based on criteria established locally and in accordance with state or local funding program requirements
- ◇ Eligible homeowners and Board of Health develop Betterment Agreements
- ◇ If the homeowner is to perform the work, use Betterment Agreement - form (see attached)
- ◇ Board of Health executes Betterment Agreements with homeowners which include findings pursuant to G.L. c. 111 and an order to perform work
- ◇ Notice of Betterment Agreement is recorded at the Registry of Deeds
- ◇ Board of Health undertakes its responsibilities under the Betterment Agreement (see attached checklists).

Using Betterment Agreement (Homeowner to Procure and Contract)

- ◇ Homeowner should schedule and conduct site visits with designers
- ◇ Homeowner should schedule and conduct deep hole and perc tests; coordinates with Board of Health agent and soil evaluator
- ◇ Homeowner procures written bids for design services
- ◇ Homeowner selects winning design bid
- ◇ Homeowner submits winning bid to Board of Health for approval and payment
- ◇ Design is rendered
- ◇ Board of Health or agent reviews and approves design and issues Disposal System Construction Permit
- ◇ If necessary, homeowner schedules and conducts prebid conference with installers
- ◇ Homeowner procures 3 written bids for system installation/ construction and related work
- ◇ Homeowner selects winning installer bid
- ◇ Board of Health or agent reviews and approves winning installer bid, including the construction schedule and budget
- ◇ Board of Health or Agent receives, reviews and approves all necessary paperwork (DSCP, related permits and approvals [ZBA, ConCom], easement or license agreements from private parties; insurance certificates, etc.)
- ◇ Construction funds are made available by the Town Treasurer
- ◇ Preconstruction advance is made, if necessary
- ◇ First construction advance made after requisition (requisition must include contractor and homeowner signatures, affidavits/lien waivers from subcontractors, copies of interim approvals, etc.)
- ◇ Second construction advance, if necessary
- ◇ Construction work is completed by contractor
- ◇ Board of Health or Agent conducts site inspection and issues Certificate of Compliance for System
- ◇ Final Payment made to contractor after delivery of Certificate of Compliance, all related paperwork (affidavits, lien waivers, etc.). If money is to be withheld from contractor pending additional work, an escrow agreement should be established.
- ◇ Final closeout of project account
- ◇ Amount paid to homeowner certified to Town Assessor
- ◇ Betterment assessments repaid through tax collection pursuant to the Betterment Agreement

SAMPLE FORM: BETTERMENT AGREEMENT

Betterment Agreement **[Owner contracts for the Work]**

This Agreement is entered into by and between _____ (the "City/Town"), by its Board of Health and Treasurer, and _____ (the "Owner") this ____ day of _____, 199__.

WHEREAS, the Owner owns residential property, including improvements thereon, known as and numbered _____, _____, Massachusetts, ___, (Assessors' Map ___, Lot ___, Block _____) and described in a deed dated _____ and recorded with the Registry of Deeds in Book _____, Page ___, [filed as Document No. _____ with the Registry District of the Land Court] (the "Property"); and

WHEREAS, the Owner has petitioned the City/Town to make findings pursuant to M.G.L.c. 111; and

WHEREAS, the Board of Health has made findings, pursuant to M.G.L.c. 111, that the on-site subsurface sewage disposal system serving the Property (the "Failed System"), exhibits one or more of the failure criteria set forth in Title 5 of the State Environmental Code, 310 CMR 15.000 ("Title 5"), such findings being made by the Board of Health prior to, or during the course of proceedings conducted pursuant to M.G.L. c. 111, s.127B; and

WHEREAS, the Board of Health has adopted an Order requiring the Owner to repair, replace or upgrade the Failed System to comply with the requirements of said Title 5; and

WHEREAS, the Owner has, pursuant to M.G.L. c. 111, s.127B1/2, applied to the City/Town for financial assistance to repair, replace and/or upgrade the Failed System; and

Local

WHEREAS, the City/Town intends to provide financial assistance to the Owner in the form of a Betterment Agreement made pursuant to said M.G.L. c. 111, s. 127B 1/2 and Local

WHEREAS, the parties intend by this Betterment Agreement to cause the repair, replacement and/or upgrade the Failed System to comply with Title 5 and other applicable

public health and environmental laws and to complete other work directly or indirectly related thereto (the "Project" as described in Paragraph 4 hereof); and

WHEREAS, the parties intend to have the Project performed by one or more persons under contract to complete the Project (the "Contractor(s)"); and

WHEREAS, the public purpose of the Project is to protect the public health, safety, welfare and the environment by the repair, replacement and/or upgrade of the Failed System.

NOW THEREFORE, the parties, for and in consideration of mutual covenants and other good and valuable consideration, do hereby agree to the terms of this Agreement, as set forth below.

1. The Agreement

The City/Town hereby agrees to provide financial assistance in an amount up to \$_____ to be advanced from time to time by the City/Town to the Owner pursuant to the terms of this Agreement. The Owner promises to repay, with interest as set forth herein, all sums provided to Owner by the City/Town. Following notice to the Owner by the City/Town collector of taxes of the amount of the betterment assessment, an amortization schedule shall be developed and incorporated as an attachment to this Agreement¹.

Interest on the amounts advanced by the City/Town to Owner shall be computed annually at the rate of _____ percent (____%) per annum on the outstanding principal balance, accruing from the 30th day after the City/Town Assessor commits the betterment assessment to the City/Town collector of taxes. The amount to be repaid shall be included on and paid with the (quarterly, semi-annual, annual) municipal tax bill. Interest amounts due prior to the inclusion of amounts due hereunder on the tax bill shall be paid pursuant to an interim bill.

All outstanding amounts due to the City/Town by Owner if not prior paid, shall be due and payable on _____ [fill in date of term].

Prepayment in full or in part of all amounts advanced hereunder may be made by the Owner without penalty.

This Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Agreement may only be amended or modified by a written modification.

¹ In cases where the final amount of the betterment has been definitively established at the signing of the Betterment Agreement, the amortization schedule should be developed and incorporated into the Betterment Agreement at the outset.

2. Installment Payments.

The City/Town shall make advances of funds to Owner and Contractor, pursuant to the terms of this Agreement, from time to time to pay for the Project. Such advances shall be made solely for the purposes set forth in this Agreement.

The obligation of the City/Town to advance all or any part of the financial assistance for repair, replacement and/or upgrade of the Failed System is subject to the following:

(A) Inspection of the Failed System by a representative of Board of Health or by a DEP Certified Septic System Inspector, as deemed necessary by the Board of Health.

(B) Submission by Owner or Contractor on behalf of the Owner of plans approved by the Board of Health for the Project. In the event Owner seeks an installment payment to pay for field work and preparation of plans for the Project, Owner shall (i) solicit a bid or bids for the necessary field work and plan preparation from registered professional engineers or registered sanitarians, (ii) shall submit documentation of these bids to City/Town and (iii) specify Owner's choice of an engineer or sanitarian. The Board of Health may approve an installment payment not to exceed the amount of the selected bid. An installment payment for field work and plan preparation shall be made by check payable jointly to Owner and the engineer or sanitarian and shall be payable upon presentation and approval of the selected bid.

(C) Submission to Board of Health by Owner of the bid or bids for the Project in accordance with the plans from licensed (including, but not limited to, a Disposal System Installer's Permit), insured, septic system contractors, which bids shall contain detailed breakdowns of the cost of the Project by tasks;

(D) Confirmation by Board of Health that the contractor for the construction of the Project (the "Contractor") selected by Owner has a valid Disposal System Installer's Permit in effect for the time period covering the System upgrade financed under this Betterment Agreement;

(E) Review by Board of Health of a Project Budget based on the bid submitted by the Contractor;

(F) Execution of a construction contract between the Owner and the Contractor pursuant to the plans and specifications which have been previously approved by the Board of Health;

(G) Issuance by the Board of Health of a Disposal System Construction Permit with respect to the Project.

3. Conditions for Payment.

Installment payments of the financial assistance are to be made by the City/Town under the following conditions:

(A) An installment payment for field work and preparation of plans shall be made to the Owner and engineer or sanitarian in accordance with Subsection (B) of Section 2.

(B) A reasonable time before the date on which any other installment payment is requested to be made, the Contractor shall give notice to Owner and City/Town specifying the total installment payment requested. Such notice shall consist of a detailed request describing the value of the completed items of work. The amount of the request shall equal the amount of the requested installment. The request shall be accompanied by a sworn certificate of the Contractor that all materialmen, subcontractors and employees have been paid for prior work on the Project. City/Town may request the Owner to provide further documentation in support of a request for an installment payment. Upon approval of any requested installment payment, the City/Town shall issue a check payable jointly to Owner and Contractor, which check shall be forwarded by City/Town to Owner.

(C) City/Town may require as a condition of any installment payment that Owner submit satisfactory evidence that there are sufficient remaining funds to pay for completion of the Project in accordance with the approved plans.

(D) Prior to making an installment payment, the Board of Health may cause the Project to be inspected to verify that the work items described in the request have been actually completed. In any case, the Contractor shall provide verification that the work referred to in the installment request has been completed in accordance with the approved plans.

(E) Prior to paying the final installment, the Contractor shall provide verification that all work has been completed in accordance with the approved plans, a sworn certificate that all materialmen, subcontractors and employees have been paid for work on or materials supplied for the Project and the Board of Health shall have issued a Certificate of Compliance for the Project.

4. Scope of Work for Project

The Owner and the Contractor, pursuant the Disposal System Construction Permit issued by the Board of Health, shall determine the Scope of the Work necessary to bring the Failed

System into compliance with Title 5. Such Scope of Work may include, but not be limited to:

- (a) performing soil and percolation tests and other necessary site analyses;
- (b) specification of the Failed System components to be repaired, replaced and/or upgraded;
- (c) design of the System or components thereof to be repaired, replaced and/or upgraded;
- (d) obtaining all applicable federal, state and local permits and approvals required to complete the Work;
- (e) seeking bids and awarding contracts for assessment, design, consulting and construction work and materials in accordance with applicable laws, regulations and requirements;
- (f) minimizing any disruption of utility service, and reasonably restoring the Property to as near its original condition as practicable; and
- (g) engaging such other services and procuring such other materials as shall be reasonably necessary to complete the Project in a good and workmanlike manner.

All such Work shall be performed pursuant to written contracts and agreements, copies of which shall be incorporated by reference into this Agreement.

5. City/Town's Right to Inspect.

The Owner agrees to allow the City/Town, including its Board of Health, Health Agent and other officials, employees and agents to enter onto the Property, as is reasonably necessary and upon reasonable notice, to test, examine and inspect the Project to verify the completion and adequacy of the Work.

6. Covenant Not To Sue

The Owner covenants and agrees not to sue the City/Town for any claims of damage to or loss of property of the Owner or others, or for breach of warranty regarding the performance or condition of the Project, or for injury, illness or death arising out of the performance of any contractors or agents engaged to perform the Work. This Covenant Not To Sue provision shall have no application to causes of action which may have arisen prior to the execution of this Agreement, or to causes of action that are unrelated to this Agreement, or to causes of action against any person or entity other than the City/Town.

7. Owner's Representations And Warranties To The City/Town.

The Owner represents and warrants to the City/Town that:

(A) Financial Information: The Borrower's Affidavitt furnished to City/Town by the Owner is accurate and complete;

(B) Title: The Owner has good record title to the Property, subject only to the Encumbrances of Record;

(C) Permits and Compliance With Law: The Owner has obtained or will obtain all necessary governmental permits for the Project. The On-Site Sewage Disposal System for the dwelling on the Property, after completion of the Project, will comply with all applicable laws, regulations, codes and ordinances, including but not limited to Title 5; and

(D) Insurance: The Owner and Contractor have procured or will procure insurance in such forms and in such amounts as shall be satisfactory to the City/Town. Certificates of Insurance shall be attached as Exhibits to this Agreement.

Each of the foregoing representations and warranties in this section shall remain in force until the financial assistance is repaid in full. The Owner shall indemnify and hold harmless the City/Town from and against loss, expense, or liability (including costs of defending any claim), directly or indirectly from the falsity, inaccuracy, or breach of any of the above representations and warranties.

8. Owner's Obligations.

During the term of this Betterment Agreement, the Owner agrees that the Owner shall comply with all of the terms and conditions of this and any related agreement and that the Owner shall:

(A) Completion of Project. Cause the Project to be promptly completed in a manner in accordance with the approved plans and with the Project Budget and in compliance with all applicable laws, regulations, codes and ordinances and notify City/Town when the Project is complete.

(B) Records and Cooperation With City/Town. Keep complete records relating to the Project, which records shall be available for inspection and copying by the City/Town, and cooperate fully with any audit of the Project if so requested by City/Town.

(C) Performance of Other Obligations. Perform all the Owner's obligations and agreements under any present or future Mortgage or other Covenant or Agreement which encumbers the Property.

(D) Use of Financial Assistance. The financial assistance is provided for the public purpose of protecting the public health, safety, welfare and the environment. The Owner shall use the proceeds of the financial assistance solely for costs included in the Project Budget and ensure that the proceeds are not used for any other purpose.

9. Events Of Default.

The Owner shall be in default under this Agreement upon the occurrence of any one or more of the following events:

(A) Sale, Transfer or Assignment Without Approval. The Owner assigns or transfers any money advanced or to be advanced hereunder to any person or entity not approved by City/Town.

(B) Cessation of Construction. The Owner or Contractor ceases construction of the Project for more than 30 consecutive calendar days. The Board of Health may waive this event of default upon application of the Owner and a demonstration that such cessation occurred because of an Act of God, governmental order or restriction, fire or other casualty, or other causes beyond Owner's reasonable control.

(C) False Representations or Warranties. Any representation or warranty made herein shall prove to be false or inaccurate in any material respect.

(D) Breach of an Obligation. The Owner defaults in the performance of any of Owner's obligations contained herein.

10. City/Town's Rights On Default.

Upon Owner's default, the City/Town shall have no further obligation to make any further installment payments and all amounts advanced by City/Town to Owner shall become immediately due and payable.

11. Notice of Betterment Agreement.

Upon execution of this Agreement by the Owner and the City/Town a Notice of this Agreement shall be recorded as a betterment and shall be subject to the provisions of M.G.L.c. 80 relative to apportionment, division, reassessment and collection of assessment, abatement and collection of assets, provided however, that the lien which shall arise pursuant to M.G.L. c. 111, s. 127B 1/2 shall take effect by operation of law on the day immediately

following the due date of such assessment or apportioned part of such assessment. The Betterment Lien, if any, shall be deemed to secure all amounts advanced hereunder, together with interest thereon, and shall include costs of collection and reasonable attorneys fees.

12. Improvements to the Property.

Any alterations or improvements to the Property resulting from the Project are the property of the Owner, and the City/Town shall bear no responsibility for the condition of the improvement or its maintenance.

13. Cancellation of the Agreement by the Owner.

The Owner may by written notice to the Board of Health and the Treasurer of the City/Town cancel Owner's further obligations for repayment under this Agreement at any time prior to the end of ten (10) calendar days following notice in writing to the City/Town of the Owner's proposed successful construction bid, based on the Owner's evaluation of the proposed scope and cost estimate of the System upgrade derived from the field work, project design and the successful construction bid. However, in the event of such cancellation, the Owner shall remain liable for repayment of all sums advanced by the City/Town to Owner pursuant to this Agreement. All sums advanced by the City/Town to Owner shall be repaid with interest and within the term set forth in Paragraph 1 hereof. Upon application of the Owner, the Board of Health may revoke the Order for Improvements, provided however, that Owner shall remain liable to comply with the provisions of Title 5.

14. Personal Obligation of the Owner.

In addition to those remedies available to the City/Town regarding the assessment and collection of betterments, the Owner shall be personally liable for the repayment of the amounts advanced, plus interest thereon and the total direct and indirect costs incurred by the City/Town in the contemplation and the performance of this Agreement or the Project. After written request of Owner, in connection with the purchase or transfer of the Owner's entire interest in the Property, the City/Town shall permit the assumption of the personal liability hereunder by said purchaser or transferee and shall release the personal liability of the Owner. The assumption and release of liability hereunder shall be in writing and shall be executed prior to the purchase or transfer by the Owner, the Purchaser or Transferee and the Treasurer of said City/Town.

15. Notice.

Any notice required to be given under this Agreement shall be made in writing and shall be delivered by either in-hand delivery or by prepaid, first class mail.

If notice is made to the City/Town, it shall be made to:

Notice shall be deemed given on the day it is hand delivered or three (3) days after the date of posting of first class mail.

16. Funding for the Agreement.

The obligations of the City/Town are expressly contingent upon funding. In the event that funding for the City/Town's obligation is unavailable, upon notice to the Owner, this Agreement may be canceled by the City/Town and all obligations of the City/Town shall be null and void.

17. Enforcement of Laws.

Nothing in this Agreement shall be deemed to stop or effect a waiver, or otherwise act as a bar or defense, to any legal proceeding by the City/Town relating to the System or the Property.

18. Severability.

In the event that one or more provisions of this Agreement is deemed unenforceable by a court of competent jurisdiction, the Agreement, except as deemed unenforceable, shall remain in full force and effect.

19. Governing Law.

This Agreement shall be governed by Massachusetts law.

IN WITNESS WHEREOF, the undersigned parties have signed this Agreement as an instrument under seal this ____ day of _____, 200_.

City/Town:

Owner:

By its Board of Health:

As to interest rate:

Approved as to form:

City/Town

By its Treasurer:

City Solicitor/Town Counsel

Exhibits

1. Designer Contract
2. System Plans and Design
3. Construction Contract(s)

1. Project Budget
2. Certificate(s) of Insurance
3. Disposal System Construction Permit

NOTICE OF BETTERMENT AGREEMENT PURSUANT TO G.L. c.
111 s. 127B 1/2

THE COMMONWEALTH OF MASSACHUSETTS

.....
CITY, TOWN OR DISTRICT
OFFICE OF

TO THE REGISTER OF DEEDS OF20...

NOTICE is hereby provided that the BOARD OF HEALTH of on
..... 20, made findings pursuant to c. 111 s. 127B and on 20
and adopted an order for improvements to be made to the on-site wastewater system serving the
property described herein.

The property to be benefited is owned by of
....., MA, is described
on a plan entitled “.....” which is deposited in the office
of and is described in a deed dated
..... 19..... and recorded with said Deeds in Book, Page
..... [filed as Document No. with the
District of the Land Court](the “Property”). Pursuant to said G.L. c. 111 s. 127B 1/2, a Betterment
is to be assessed on the Property in an amount to be determined pursuant to the Betterment
Agreement of the Owner of the Property and the Board of Health dated

BOARD OF HEALTH OF

.....
CITY, TOWN OR DISTRICT

.....

.....

.....

THE COMMONWEALTH OF MASSACHUSETTS

....., S.S., 20....

Then personally appeared the above named who
acknowledged the foregoing to his/her free act and deed and the free act and deed of the
..... Board of Health, before me,

.....
NOTARY PUBLIC
MY COMMISSION EXPIRES:

THE “BETTERMENT BILL”

C. 111 Sec. 127B1/2.

Petition for Findings as to Septic System, Underground Fuel Storage Tank, or Lead Paint; Agreement on Remedial Measures; Responsibility for Costs.

At any time prior to or during the course of proceedings conducted pursuant to section one hundred and twenty-seven B, resulting solely from a residential underground fuel storage tank or the detection of dangerous lead paint levels, as determined under the authority of section one hundred and ninety-four, or in the event the state environmental code pursuant to section thirteen of chapter twenty-one A requires the repair, replacement and/or upgrade of a septic system the owner of a structure used for human habitation may petition the board of health in a city or town to make findings consistent with its authority under this chapter and may enter into an agreement, subject to appropriation, authorizing such board of health or such owner to cause the premises to be properly serviced by a septic system, removal of a residential underground fuel storage tank or to have removed any dangerous levels of lead paint, as determined under the authority of section one hundred and ninety-four, at the owners expense. An owner who enters into such an agreement shall be responsible for all expenses incurred by the board of health, directly or indirectly, or required by the board of health and incurred by the owner for such repairs, replacement and/or upgrade of a septic system, removal of a residential underground fuel storage tank or removal of dangerous levels of lead paint. A notice of such agreement shall be recorded as a betterment and be subject to the provisions of chapter eighty relative to the apportionment, division, reassessment and collection of assessment, abatement and collections of assessments, and to interest; provided, however, that for purposes of this section, such lien shall take effect by operation of law on the day immediately following the due date of such assessment or apportioned part of such assessment and such assessment may bear interest at a rate determined by the city or town treasurer by agreement with the owner at the time such agreement is entered into between the board of health and the property owner. In addition to remedies available under chapter eighty, the property owner shall be personally liable for the repayment of the total costs incurred by the city or town under this section; provided however, that upon assumption of such personal obligation to a purchaser or other transferee of all of the original owners interest in the property at the time of conveyance and the recording of such assumption, the owner shall be relieved of such personal liability.

Any costs incurred under the provisions of this section may be funded by an appropriation or issuance of debt, provided that any debt incurred shall be subject to the provisions of chapter forty-four and shall not exceed twenty years.

Any appropriation or borrowing by the city or town for purposes contained within this section shall not be included for the purpose of computation of the levy or borrowing limits otherwise imposed upon such city or town by the general laws.

An agreement between an owner and a board of health in a city or town pursuant to this section shall not be considered a breach of limitation or prohibition contained in a note, mortgage or contract on the transfer of an interest in property.

A board of health in a city or town acting pursuant to the provisions of this section shall have the same authority as set forth in section one hundred and twenty-seven B to institute an action for eviction. Any such action by the board of health shall not otherwise impair the rights or obligations of the occupants or owner with respect to each other.

PROJECT APPROVAL CERTIFICATE/PROJECT REGULATORY AGREEMENT

Number: «PAC » Community: «community» Option: «option»

DEPARTMENT OF ENVIRONMENTAL PROTECTION THE LOCAL SEPTIC MANAGEMENT PROGRAM

Project Approval Certificate and Regulatory Agreement

I. Project Approval Certificate

The Department of Environmental Protection (the "Department") of The Commonwealth of Massachusetts (the "Commonwealth"), in accordance with Section 2 of Chapter 15, Acts of 1996 (the "Act"), hereby approves the Project of Town of «community» (the "Borrower"), developed in accordance with the Department's Community Septic Management Program Description and Requirements, and hereby certifies to the Massachusetts Water Pollution Abatement Trust (the "Trust") the total costs of the Project eligible for a Loan from the Trust in the amount of \$200,000, subsidized at a 50% grant equivalency. See **Exhibit A** for Borrower information, Project budget, completion schedule, and special conditions.

This Certificate is issued by the Department on the basis of information provided by the Borrower in its application for financial assistance from the Community Septic Management Program. The Borrower has agreed to promptly notify the Department of any material change in the above information, which may be grounds for the Department's modification or rescission of this Certificate.

II. Project Regulatory Agreement

WHEREAS, the Department has issued the above referenced Project Approval Certificate, and the Department, as authorized under the Act, has allocated funds for loans from the State Revolving Loan Fund (the "SRF"), administered by the Trust to fund local betterment programs; and

WHEREAS, the Borrower has requested that the Trust finance costs of the Project by a loan from the Trust to the Borrower (the "Loan"), and to evidence the indebtedness to be incurred thereby, the Borrower has executed and delivered a Loan Agreement to the Trust (the "Loan Agreement"); and

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as following provisions:

Section 1. Project Funding

1.01 The Borrower agrees with the Department's determination of eligible Project Costs as set forth in the Project Approval Certificate, and shall seek payment or reimbursement of Project Costs in accordance with such determination.

Section 2. Disbursement of Loan Proceeds

2.01 Disbursements. Funds will be made available to the Borrower by advance installment payments and in amounts determined by the Department. The Borrower shall expend the full amount of the Loan consistent with the project completion schedule in Exhibit A unless the Department approves an extension of time as provided for in section 3.09 below.

(a) All requisitions for advance payment shall be submitted by the Borrower in accordance with a form approved by the Department and at a frequency satisfactory to the Department.

(b) Each requisition shall be signed by the authorized officer of the borrower and shall set forth in reasonable detail the amount of advance payment requested. Each requisition shall also include a written certification signed by an Authorized Officer of the Borrower stating that:

- (i) such payment is for Project Costs and that the obligations specified therein have not been the basis for a prior requisition which has been paid;
- (ii) no Default as defined hereunder, and no Event of Default as defined in the Loan Agreement, has occurred and is continuing and no event or condition exists which, after notice or lapse of time or both, would become a Default hereunder or Event of Default under the Loan Agreement; and
- (iii) the payment requested by the requisition will be for Project Costs to be or already authorized under a betterment agreement between the Borrower and system owner, and that no advance funds shall be disbursed to the system owner until such betterment agreement has been executed between the Borrower and the system owner.

2.02 Loan Monitoring. In addition, as a precondition to receiving and retaining any advance payments under this Agreement, the Borrower shall submit The Analysis of the Homeowner Septic Repair Special Revenue Account Quarterly Report (the "Report") no later than fifteenth day of July, October, January, and April. The Report requires the Borrower to provide information on the status of advance payments and to account for any actual and planned disbursements to system owners based on executed betterment agreements for each quarter ending September 30, December 31, March 30, and June 30. Each Report shall be signed by both the Treasurer and senior accountant of the Borrower.

Reports must be mailed or hand delivered to the Title 5 Coordinator assigned to your loan by the Department's Regional Office.

(a) Each system upgrade completed shall be evidenced by the submission of the Certificates of Compliance issued by the board of health documenting that the upgrade of each failed septic system financed by the Loan and the underlying betterment agreement between the Borrower and the system owner has been completed in compliance with 310 CMR 15.000 ("Title 5").

(b) If requested by the Department, the Borrower shall submit further documentation in support of a Report or a requisition.

2.03 Program Completion. Completion of the Program shall be evidenced by the filing with the Department of a certificate (the "Project Completion Certificate") signed by an Authorized Officer of the Borrower stating that the Project (i.e., the Borrower's betterment program) has been completed and performed in accordance with the requirements of this Regulatory Agreement and the Loan Agreement. Such Project Completion Certificate shall be accompanied by a final Report and any remaining Certificates of Compliance issued by the board of health documenting that the upgrade of each failed septic system financed by the Loan has been completed in compliance with 310 CMR 15.000 ("Title 5").

Section 3. General Conditions and Covenants of the Borrower

3.01 The Borrower shall comply with all state statutes, regulations and requirements applicable to the Project, including, but not limited to the requirements of 310 CMR 15.000, G.L.c. 111, s.127B1/2, and with the Department's approval of the Project and its Community Septic Management Program Description and Requirements.

3.02 The Department and/or the State Auditor or his or her designee, shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data which pertain to the performance of the provisions and requirements of this Regulatory Agreement. In addition, the Borrower shall give the Department access to the Project site at reasonable times and upon reasonable notice to the Borrower by the Department.

3.03 The Borrower shall retain all records relating to the Project for seven (7) years after Project completion, or until any litigation, appeal, claim, or audit that is begun before the end of the seven-year period is completed and resolved, whichever is longer.

3.04 The Borrower shall maintain Project accounts in accordance with generally accepted government accounting standards.

3.05 The Borrower shall comply with the Civil Rights Act of 1964, 42 USC s.2000(a) et seq., as amended, and all Executive Orders and regulations promulgated thereunder. A Nondiscrimination in Employment form shall be signed and delivered to the Department.

3.06 The Borrower shall comply with the provisions set forth in Executive Order 237 (or in any successor Executive Order) for the use of minority and woman business enterprises ("M/WBEs") in all construction, service and supply contracts related to the Project.

3.07 The Borrower shall furnish information and otherwise cooperate with the Department in any evaluation pursuant to the Massachusetts Environmental Policy Act, G.L.c. 30, s.61 et seq. ("MEPA"). The Borrower shall implement all mitigation measures required in connection with the review processes under MEPA.

3.08 The Borrower shall obtain, and comply with, all state permits and approvals required for the Project, and is solely responsible for the administration and successful completion of the Project.

3.09 The Borrower shall promptly notify the Department in writing whenever the Borrower has good reason to believe that: (1) the Project costs which it will incur will be substantially less than those previously approved in the loan, as set forth in the Project Budget in **Exhibit A**; or (2) the Borrower will be unable to meet the schedule set forth in the Project Schedule in **Exhibit A** and/or requisition the full amount of the Loan no later than February 1, 1999. The Department shall not be obligated to certify, nor the Trust to pay for, Project costs incurred in excess of the Loan amount *unless* the Department has approved the increase through an amendment to the project approval certificate and the loan has been amended to include the increased amount. The Department reserves the right to rescind its approval, in whole or in part, should the borrower fail to commit to executed betterment agreements, the full amount of the initial installment received by the borrower within six months of the executed loan agreement. The Department may, at its discretion, grant an extension to the program deadline in cases where the Borrower has demonstrated to the Department's satisfaction that its failure to requisition the full Loan amount was justified under the circumstances and that the Borrower will complete the Project and requisition the remaining Loan amount in a timely manner.

3:10 The Borrower shall implement the Project in accordance with the requirements of 310 CMR 15.000 and the Department's approval of the project and its Community Septic Management Program Description and Requirements. In doing so, the local betterment program component of its Comprehensive Community Septic Management Program must also take into account the financial needs of low and moderate income homeowners in the following manner:

The upgrade of septic systems having the greatest environmental impact should receive funding preference. However, in the event that the upgrades are of equivalent environmental priority, funding should first be allocated to upgrade the system owned by a low or moderate income homeowner, as defined by the Massachusetts Housing Finance Agency ("MHFA").

3:11 Use of Betterment Agreement(s): The Department and the Trust have developed the following model Betterment Agreements for use under the Community Septic Management Program:

o ***Betterment Agreement*** (when the homeowner is contracting to do the upgrade of the failed septic system).

The Borrower is not precluded from modifying or supplementing the terms of these model Betterment Agreements, provided that any such changes are consistent with the model Betterment Agreements and the Borrower retains the language of the following provisions of the model Betterment Agreements:

In Betterment Agreement : (1)The Agreement (with the flexibility noted therein - see n.1); (2) Installment Payments (the Borrower has the discretion to specify additional procurement requirements - e.g., minimum no. of bids or BOH approval of construction contract); (3) Conditions for Payment; (5) Right to Inspect; (7) Owner's Representations and Warranties to City/Town; (8) Owner's Obligations; (9) Events of Default; (13) Cancellation of the Agreement by the Owner; and (14) Personal Obligation of the Owner.

3.12 The Department may suspend or terminate payments to the Borrower under the loan agreement in instances where it determines that there is probable cause to believe that the loan agreement was obtained on the basis of fraud, deceit, or illegality or that the Borrower has failed to comply with the terms of the Loan Agreement.

3.13 The Department's approval of this Project for SRF loan assistance does not constitute a state sanction or approval of any changes or deviation from established water quality standards, criteria, implementation dates or from dates established by applicable enforcement proceedings.

3.14 The Borrower shall provide Department representatives with access to the Project whenever it is in preparation or progress, including obtaining, through the underlying betterment agreements, the consent of the septic system owners to provide such access to the Department.

3.15 The Borrower shall comply with the special conditions set forth in **Exhibit A**.

Section 4. Default/Remedies for Default

4.01 Default. The Borrower shall have committed a Default under this Regulatory Agreement if the Borrower shall fail to perform and observe any covenant, agreement or condition on its part provided in this Regulatory Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof shall be given to the Borrower by the Department; provided if such failure cannot be remedied within such thirty (30) day period, it shall not constitute a Default hereunder if corrective action satisfactory to the

Department is instituted by the Borrower within such period and diligently pursued until the failure is remedied.

4.02 Remedies for Default. If a Default shall occur, and be continuing hereunder, the Department may, in its sole discretion, take one or more of the following measures to the extent necessary to remedy the Default:

- (a) The Department may postpone approval of requisitions submitted to the Department pursuant to Section 2 or direct the Trust to cancel all or any part of the Loan not yet disbursed to the Borrower; or
- (b) The Department may rescind approval of any requisition previously approved by the Department but not yet acted upon by the Trust; or
- (c) The Department may direct the Trust to declare an Event of Default under the Loan Agreement.

Section 5. Miscellaneous

5.01 Notices. All notices, consents, certificates and other communications hereunder shall be sufficiently given when delivered by hand or courier or telecopied or mailed by registered or certified mail, postage prepaid, addressed as set forth in **Exhibit A** or to such further or different address provided by any of the parties.

5.02 Assignments. The Borrower shall not assign this Regulatory Agreement, or any of the rights or obligations hereunder, without the prior written consent of the Department and the Trust.

5.03 Severability. In the event that any provisions of this Regulatory Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

5.04 Amendment. This Regulatory Agreement may not be amended, modified or changed in any respect except in writing and signed by the parties hereto. No such amendment, modification or change to this Regulatory Agreement (other than an amendment to Sections 2 and 4 and **Exhibit A** of such Regulatory Agreement) which, in the reasonable opinion of the Trust (expressed in a certificate of an Authorized Officer of the Trust delivered to the Department and the Borrower prior to the execution and delivery of such amendment, modification or change), would materially and adversely affect the rights and obligations of the Trust under the Loan Agreement shall be effective without the prior written consent of the Trust, which consent shall not be unreasonably withheld. A copy of any proposed amendment, modification or change to the applicable sections of the Regulatory Agreement shall be delivered to the Trust by the Department not less than ten (10) days prior to the date of execution and delivery thereof.

5.05 Execution in Counterparts. This Regulatory Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

5.06 Applicable Law. This Regulatory Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth.

IN WITNESS WHEREOF, the Department and the Borrower have caused this Regulatory Agreement to be executed by their duly Authorized Officers the day and year first above written.

DEPARTMENT OF ENVIRONMENTAL PROTECTION:

By _____
Robert Golledge, Commissioner, DEP

BORROWER:

By _____
Authorized Officer

PAC/PRA «community»() «option» Exhibit A

Local Septic Management Program

A. General Information

For the Community/Applicant: For the Administating Entity:

Community/Applicant:

Administrating Entity:

Street:

Street:

City, State, Zip Code:

City, State, Zip Code:

Contact Person:

Contact Person:

Title:

Title:

Telephone Number:

Telephone Number

Fax Number

Fax Number

B. Budget

Title 5 Betterment Loans \$200,000

C. Project Completion Schedule

D. Special Conditions

STATE REVOLVING FUND PROCEDURES

Each municipality participating in the Community Septic Management Program will enter into a State Revolving Fund (SRF) loan with the Massachusetts Water Pollution Abatement Trust (the "Trust"). The SRF serves as the source of funds for making betterment loans to homeowners and for project administration. The funds are loaned on the basis of a "50% grant equivalency." The "grant equivalency" is the Commonwealth's method of describing the level of subsidy provided to lower the interest rate incurred by the municipality. As a result of this interest rate subsidy, the municipality will incur no interest charge during the term of the SRF loan.

In order to be eligible to enter into the SRF loan each municipality must obtain the authorized required by loan. In most towns, a 2/3 vote of the town meeting must authorize the borrowing. In other towns and cities, a 2/3 vote of the City Council, Town Council or Board of Aldermen must occur. After this vote, the chief executive of the town (Mayor, Town Manager, Chairman of the Board of Selectmen) may sign the Loan Agreement and related documents. The Loan Agreement and its attachments and certifications set forth the basic legal terms and conditions of the SRF loan. This standard form agreement is provided by the Trust. In addition, the municipality will execute a Loan Questionnaire and a Borrower's Closing Certificate to evidence the SRF loan. The municipality will issue notes or bonds (as required by the Trust) and must supply the Trust with a legal opinion from the municipality's Bond Counsel. Samples of each of the documents are provided in this section.

Once the legal documents have been executed and returned to the Trust the municipality may requisition SRF loan funds. Payment requisitions must be made on the DEP/Department of Municipal Services T5-1000 form. The forms should be executed by the municipal treasurer *and* health official (or the persons who have been provided with authority to execute the forms). The forms are then forwarded to the DEP Regional Coordinator assigned to the municipality. The Coordinator will forward the requisition request to the DEP/Department of Municipal Services contact person and to the Trust. Payment requisitions may be made in amounts sufficient to cover anticipated funding needs for up to 3 months. Disbursements will be made by wire transfer only.

The municipal treasurer and accountant will be required to make a quarterly report to the Division of Local Services. (See Tab 13, Appendix IV). This report will summarize the financial aspects of Local Septic Management Program activity. Copies of the quarterly report must be forwarded to DOR/DLS, the DEP Regional Coordinator and to the Trust.

The Division of Local Services has provided a Bulletin to define the municipal accounting procedures for funds received by municipalities from the Trust and the funds

repaid by homeowners who have obtained financial assistance through betterment loans. (See Tab 13, Appendix III).

The Program establishes a timeframe during which betterment loans may be made to homeowners from the initial SRF loan. As a result, the municipality will have a sufficient opportunity to commence collections from homeowners. Operation of the Program will require that the municipal accountant have an appropriate cash management strategy in place. DOR/Division of Local Services field representatives have been trained to provide assistance to municipal officials responsible for oversight and financial management of Local Septic Management Programs.

RESOURCES AND TOOLS FOR PROGRAM MANAGEMENT

Department of Environmental Protection - Regional Contacts

Current Department of Environmental Protection contacts for information, updates, technical assistance, and guidance related to the Community Septic Management Program:

Northeast/Metro Boston Region

Nehar Mohanty

Southeast Region

Pamela Truesdale
20 Riverside Drive
Lakeville, MA 02347
tel: (508) 946 - 2881
fax: (508) 947 6557
email: Pamela.Truesdale@state.ma.us

Central Region

Joanne Kasper-Dunn
627 Main Street
Worcester, MA 01608
tel: (508)-767-2763
fax: (508) 792 7621
email: joanne.kasper@state.ma.us

Western Region

Deirdre Cabral
436 Dwight Street, Suite 402
Springfield, MA 01103
tel: (413) 755-2148
fax: (413) 784 1149
email: deirdre.cabral@state.ma.us

Department of Environmental Protection - Boston Resources

For specific information on state revolving fund loans, financing and other funding related issues

Joseph McNealy
One Winter Street
Boston, MA 02108
tel: (617) 556 1068
fax: (617) 292 5850
email: joseph.mcnealy@state.ma.us

For information on SRF loan administration and project management, payments forms and draw down requests:

R. Evans (Dick) Stewart
One Winter Street
Boston, MA 02108
tel: (617) 292 5724
fax: (617) 292 5850
email: REVANS.stewart@state.ma.us

Massachusetts Water Pollution Abatement Trust

For information on the status of wire transfers, disbursements of funds from the Trust, loan repayment information and copies of legal documents (loan agreement, loan amortization, etc.):

Mass. Water Pollution Abatement Trust
One Ashburton Place, Room 1207
Boston, MA 02108

Nancy Parrillo , Treasurer
tel: (617) 367 9333 ext 508
fax: (617) 227 1773

Mr. Keith McCarthy
tel: (617) 367 9333 ext 521

Department of Revenue/Division of Local Services

The Department of Revenue/Division of Local Services provides information and technical assistance to cities and towns in matters regarding municipal finance. The Division has published the “Guide to Financial Management for Town Officials” which provides an excellent introduction for municipal officials in municipal finance. The DOR regularly publishes Informational Guidance, Bulletins, Regulations and other materials on its World Wide Web site <http://www.state.ma.us/dls/dor2.htm>.

For more information regarding financial accounting for the Community Septic Management Program and related issues contact:

Director of Accounts
Division of Local Services
Box 55490
Boston, MA 02205
Tel: 617 626 2300
Fax: 617 626 2330

DOR/DLS field representatives in each region are available to assist local officials comply with the fiscal accounting and reporting requirements for the Program.

Infoline, Hotlines

Serving more than 18,000 callers a year, DEP InfoLine is a one-stop source for business people, consultants, lawyers and municipal officials who need:

- Answers to general DEP Questions
- Permit Application Kits

- Compliance Fee Assistance
- DEP Seminar Information
- Referrals to Technical Experts
- Policies and Guidance Documents
- Environmental Education Materials
- Access to the MCP Hotline for information on waste site cleanup regulations

DEP InfoLine and the Regional Service Centers are both a part of DEP's commitment to making it easier for you to understand and comply with the environmental rules.

From area code 617 and 781 and outside Massachusetts:
(617) 338-2255 (TDD: 617-574-6868)

From area codes 413, 508 and 978:
1-800-462-0444 (TDD: 1-800-298-2207)

By Email:
info@state.ma.us

Title 5 Hotline:
Title 5 (Septic Systems): 1-800-266-1122 or (617) 292-5886

GIS Assistance

To obtain GIS maps, data layers, general information and assistance in setting up GIS tools for the Community, information on ArcView (GIS Data Visualization Tool), general training to interested groups on what GIS can do.

Department of Environmental Protection
 One Winter Street 9th Floor
 Boston, MA 02108
 Tel: 617 292 5575
 Fax: 617 556 1049

Executive Office of Environmental Affairs
 20 Somerset Street 3rd Floor
 Boston, MA 02108
 Tel: 617 727 5227

Consumer Protection Information

Office of the Attorney General
200 Portland Street
Boston, MA 02114
tel: (617) 727 2200 ext 3200

Consumer Information Hotline: (617) 727 8400

Regulations

The State House Bookstore maintains a wide variety of publications, regulations and useful documents. A catalog of materials available at the Bookstore is available. State Bookstore

Secretary of the Commonwealth
Room 116, State House
Boston, MA 02133
tel: (617) 727-2834
fax: (617) 973-4858

Secretary of the Commonwealth - Western
Office
436 Dwight Street
Springfield, MA 01103
(413) 784-1376

The Internet

The Internet offers almost unlimited information about municipal, state and federal programs, private firms providing consulting services, free publications, newsletters for downloading and links to various governmental agencies. It is fast becoming a cost-effective and time-efficient means for doing research, communicating with other local and state officials and obtaining official forms and memoranda. The popular World Wide Web provides an easy to use 'interface' to gain access to the Internet. The 'Web' uses a 'graphical interface' (i.e. pictures and text) which allows the user to 'point and click' to find information and move among 'Web Sites' and 'Home Pages'. All personal computers on the market provide the hardware and software necessary to make a connection to the Internet over standard telephone lines. Internet access companies charge a subscription fee (approximately \$10 - \$20 per month) to connect to the Internet by telephone.

DEP's Home Page offers extensive information on environmental and Title 5 related topics including regulations, publications, brochures, newsletters, approved system inspectors and soil evaluators, SRF loans, GIS, Municipal Services, and 'links' to all Executive Branch agencies, the Legislature, the Governor's Office, the EPA and other environment related sites.

Massachusetts Sites:

Massachusetts State Government Home Page	http://www.magnet.state.ma.us
DEP Home Page	http://www.magnet.state.ma.us/dep/dephome.htm
<i>Quarterly Reports</i>	http://www.state.ma.us/dep/brp/mf/cwsrf.htm
DOR/DLS Home Page	http://www.state.ma.us/dls/dor2.htm
DPH Home Page	http://www.state.ma.us/dph/dphhome.htm

Other sites of interest:

EPA's Office on Water	http://www.epa.gov/ow/
Mass. Association of Health Boards	http://www.mahb.org
Mass. Association of Health Officers	http://www.tiac.net/biz/mhoa
Small Flows Clearinghouse	http://estd.wvu.edu/nsfc/
Septic System Info Website	http://www.inspect-ny.com/septbook.htm

Relevant information, forms and updates about the Community Septic Management Program will be posted from time to time on DEP's World Wide Web page.

National Small Flows Clearinghouse

West Virginia University
P.O. 6064
Morgantown, WV 26506-6064










Tel: 800 624 8301
Fax: 304 293 4191
Internet: <http://estd.wvu.edu/nsfc/>

The National Small Flows Clearinghouse ('NSFC') provides information, referrals, training and technical assistance for small communities to aid in solving wastewater problems. NSFC is sponsored by grants from the US Environmental Protection Agency. The Clearinghouse publication 'Small Flows' provides information in an 'easy-to-understand' format and is available free of charge by mail or through the Internet.

Computer Information

Hardware:

Note: DEP does not endorse any specific computer configuration, however, the following configuration will enable Board of Health members and staff to utilize GIS capabilities and other graphic intensive applications. The Board of Health should consult with their municipal Information Systems Director or Computer staff prior to making a computer purchase. The computers and software should be compatible with other municipal information systems, if possible. Many computer manufacturers offer "preferred" governmental pricing for municipalities.

-  IBM compatible computer with an Intel Pentium (586) or equivalent processor operating @ 166 Mhz or above, 2+ Gigabyte hard drive, 1.44 MB floppy drive, mouse, Windows 3.1 or Windows 95
-  32MB Random Access Memory (RAM)
-  Color Monitor 15" or 17" (w/ high resolution) 17" monitor preferred for viewing Geographic Information Systems (GIS) applications.
-  8X or 12X CD ROM
-  'Zip' Drive or equivalent for backup and storage of large files
-  33.6 Internal Fax Modem
-  Video card w/ 2MB+ RAM
-  color or black & white printer (inkjet or laser) of a reputable brand
-  color document scanner

Software

Through grants and other initiatives various agencies within the Executive Office of Environmental Affairs have developed septic system tracking software. Several municipalities have created their own data bases in Microsoft Access, Lotus Approach, Paradox, and Microsoft Excel. Most of the software programs described in this section are customized 'templates' which operate with a standard program from a software company (e.g. Microsoft or Lotus). Most software programs are available as part of a 'suite' (e.g. word processor, spreadsheet, database) which may already be in use in the municipality. All of the programs described in this section operate using Microsoft Windows 3.1 or Windows 95.

Most municipalities have computerized assessor's records which provide information regarding every parcel of real estate. Before selecting a software program or template, the Board of Health should consult with the municipal Information Systems Director, the Assessor and the Tax Collector. The Assessor or Collector may be able to provide data records in a format that may be usable by the septic system tracking software. The Assessor's data base manager or computer consultants may provide some assistance as well. To the extent possible, the Board of Health should build on or use existing data base systems to avoid duplication of effort or the creation of unnecessary administrative tasks.

The Board should anticipate that the records must be annually updated to reflect new growth and the continued division of existing parcels into new building lots. The Board should consider budgeting time and funds to engage a consultant to set up the system, tailor it to the needs of the local program and, if necessary, to train the staff to operate and maintain the database.

Microsoft Access based program: UMASS Extension is under contract with DEP to create a database using Microsoft Access and to provide limited technical assistance. At this time the software template is under development. Input from potential users is being solicited regarding features, compatibility with existing database records, user interface, et cetera. The program is scheduled to be available in January, 1998. UMASS will turn over its technical assistance role to DEP by March 1, 1998.

Contact: Peter Coffin, UMass Extension, (508) 831-1223
tcoffin@umext.umass.edu

Lotus-based program: A simple and good introduction to computerized data management for Lotus 1-2-3 aficionados. The Lotus manual discusses many of the points a Board of Health needs to consider when deciding whether to utilize a computer for septic system management. The Lotus package tracks septic system information in a tabular form and generates a few reports. Lotus 1-2-3 version 5 for Windows is necessary to run this program. This program allows basic organization of information and will allow to export data in another spreadsheet such as Excel or another database.

Foxpro-based program: SepTrak is a septic system tracking program jointly developed by the Buzzards Bay Project, a unit of the Massachusetts Coastal Zone Management Office, and Kyran Research Associates of Newport Rhode Island through a contract with the Massachusetts Coastal Zone Management. SepTrak uses FoxPro version 2.6 which is still available by mail order from Computer Discount Warehouse (CDW) at 1-800-400-4239. CZM has produced a three diskette stand-alone version to run SepTrak without the base software, but the program is easier to handle in its full version. To transfer assessor's data into SepTrak, hiring a computer consultant is strongly recommended. The program is currently being upgraded by Kyran.

Contact: Peter Coffin, UMass Extension, (508) 831-1223

The Access, Lotus and FoxPro templates are available to Boards of Health at no cost. The Board will be required to purchase the application software in order to use the template.

“CAMA”-Computer Assisted Massachusetts Assessment system: As part of a “pilot” initiative, the Massachusetts Department of Revenue, Division of Local Services has developed a septic system tracking module for the Town of Uxbridge. CAMA is used by many municipalities throughout the Commonwealth

Contact: Linda Bradley, Department of Revenue, (800)-521-5536 x 62394)

Epi Info version 6 A public domain database, word processing and statistics program is available to the health departments from Center for Disease Control. Although used to report epidemiological data to CDC, the program, which is free, has some programming capabilities and with some modifications may be used to extract pumping dates, inspection dates etc. At least one community is attempting to use it for septic system tracking. It may be obtained by contacting Epi Info hotline at (404) 728 0545. The fax no. is (404) 315 6440. Email: JRB9@ORKAND.EM.CDC.GOV

Regional Planning Agencies

Regional Planning Agencies offer a wide variety of services to the communities in their regions. Issues pertaining to economic development, land use, transportation, air and water quality, housing and others may be the subject of planning initiatives by RPAs. Planning agency staff can offer assistance in diverse areas such as GIS, creating and administering Local Inspection and Local Management Plans, and other tasks related to the implementation of the Community Septic Management Program.

Information on planning agencies and services may be obtained from:

Metropolitan Area Planning Council
60 Temple Place
Boston, MA 02111
tel: (617) 451 2770
fax: (617) 482 7185

Montachusett Regional Planning Comm'n
MART Garage and Maintenance Facility
R1427 Water Street
Fitchburg, MA 01420
508 345 7376

Berkshire Cty. Regional Planning Comm'n.
10 Fenn Street
Pittsfield, MA 01201
413 442 1521
Contact: Nathaniel Karns

Nantucket Planning & Economic Devel.
Comm'n
1 East Chester Street
Nantucket MA 02554
508 228 7237

Cape Cod Commission
3225 Main Street
Barnstable, MA 02630
508 362 3828

Northern Middlesex Council of Gov'ts
115 Thorndike Street
Lowell, MA 01852
508 454 8021

Central Mass. Regional Planning Comm'n.
20 Washington Square Suite 300
Worcester, MA 01604

Old Colony Planning Council
70 School Street
Brockton, MA 02401
508 583 1833

Franklin Council of Gov'ts./Planning Dept.
425 Main Street
Greenfield, MA 01301
413 774 2251
Contact: Jane Pierce

Pioneer Valley Planning Commission
26 Central Street
W. Springfield, MA 01089
413 781 6045
Attn: Carl Mailler

Martha's Vineyard Commission
Box 1447
Oak Bluffs, MA 02557
508 693 3453

Southeastern Regional Planning and Economic
Development District
88 Broadway
Taunton, MA 02780
508 824 1367

Merrimack Valley Planning Commission
160 Main Street
Haverhill, MA 01830
508 374 0519

APPENDICES

APPENDIX I SAMPLE APPLICATION - DRAFT

TOWN OF MIDDLEBORO

COMMUNITY SEPTIC MANAGEMENT PROGRAM

General

The Town of Middleboro has received approval by Town Meeting vote to enact the Community Septic Management Program. This septic system replacement program, provided through the Department of Environmental Protection (DEP), makes available a loan to homeowners in our community, whom lie within an environmental sensitive area, as outlined herein. To qualify you must have a failed septic system and lie within an environmental sensitive area.

A failed septic system should have a certification, stating such, issued by a DEP approved system inspector.

Eligible Items

The loan will consist of combining all costs associated with septic system repair, replacement or upgrading. This includes property line determination, soil evaluation, septic system design and general construction and installation. Any ancillary items that may be required will be determined eligible by the Town of Middleboro or designee.

Loan Terms

The loan's terms will be a five percent loan, to be paid back over ____ (15 or 20) years. Payment will be twice yearly with your real estate tax bill.

The loan will be secured as a betterment assessment against your property. The betterment assessment may be paid off at any time, or when you sell your home, without penalty. You will be expected to make payment upon receipt of the first tax bill received, after the Certificate of Compliance is issued by the Board of Health for the completed and accepted Title 5 designed and installed septic system.

Environmentally Sensitive Areas

The Town of Middleboro has determined that the following area's are environmentally sensitive areas. The Town has designated a plan or map, entitled _____, to provide an outline of environmental sensitive areas. Other areas, not outlined on the map at this point in time, shall be determined by the Town, on a case by case basis, until finalization of environmentally sensitive areas are completed.

1. Wood Pond Area
2. Areas within Zone II of the Town's ground water wells.
3. Areas within 100 feet of any stream, river or waterway
- 4.
- 5.
- 6.

The Town may designate specific environmentally sensitive areas as having a higher priority than others, based on the number of applicants that are received.

Application Process

Should you, as a resident and homeowner of the Town of Middleboro qualify, then complete the attached application and submit to _____ the Town Manager's Office. You will be notified of your eligibility. You should be aware that the Town may exhaust available monies, made available by DEP. If so, then you may be placed on a waiting or 'Priority List', until additional monies become available.

Public Meeting

There will be a public meeting on _____ at Town Hall. The purpose of this public meeting will be to explain the program and answer any questions that you, the homeowner may have.

The Process

Upon approval by the Town of Middleboro of your application, you will be expected to sign a Betterment Agreement with the Town of Middleboro. The Betterment Agreement outlines the terms of the loan and what is expected of both parties. Have your lawyer review the Agreement, if you find it necessary.

Once the agreement is signed, then you may proceed with one of two choices.

You may elect to obtain bids from engineers and/or general contractors (vendors) on your own. It is recommended that you obtain at least three bids. This will allow you to obtain the most cost effective price. It is up to you, the homeowner to select the choice that you feel most comfortable with. It does not necessarily have to be the lowest bidder. You will enter into a signed contract with either vendor. You may want to consider having the design engineer serve as the inspector of the general contractor's work and coordinator of submitting bills to Town Hall.

If you choose this option, engineers and general contractors will be expected to submit bills to you twice. You will be expected to review the bill, approve it and forward it to _____ at Town Hall.

A joint check will be issued by the Town with your name and the vendor's name to you. You will be expected to sign the check and give it to the vendor, if you approve their work. Upon completion of the engineering evaluation and design and the general construction, the Board of Health will inspect and issue a Certificate of Compliance for the septic system. This is the end of the project. A final check may be issued to the engineer and general contractor, provided that all work has been performed satisfactorily.

COMMUNITY SEPTIC MANAGEMENT PROGRAM

BETTERMENT LOANS

HOMEOWNER PACKAGE

Dear Homeowner:

This package provides information for you, the homeowner, to apply for a septic system betterment loan. This loan is provided, through the Department of Environmental Protection at a five percent (5%) interest rate for a period of 5, 10, 15, or 20 years. There is no credit check required, although all of your real estate taxes, water bill or any other municipal account should be paid and up to date. The loan process is reviewed and approved by the Board of Health and you will be notified within two weeks (2) of your standing.

Attached are various documents for your review. These documents are outlined as follows:

Application:

This application must be completed and submitted to the Board of Health. which will confirm your interest in the program.

Homeowner Checklist For Engineering Design:

This checklist contains a series of queries to ask an engineer, septic system inspector or a soil evaluator. These disciplines are necessary to initially inspect (System Inspector), perform a soil evaluation and percolation test (Soil Evaluator) and design a septic system (Civil or Sanitary Engineer). All must be certified and licensed by the Commonwealth of Massachusetts. Ask to see their license or certification.

Homeowner Checklist for A General Contractor

This checklist allows you to question a general contractor whom may be bidding on the Board of Health approved septic system design plans.

Betterment Agreement

The betterment agreement is the signed agreement between you, the homeowner and our community. This agreement may be reviewed by your lawyer when provided to you by our Board of Health. The agreement allows our community to provide you money to pay for the work that is agreed upon.

Draft Contract for the Engineer

Draft Contract for the General Contractor

LOCAL SEPTIC MANAGEMENT PROGRAM

APPLICATION FORM

COMMUNITY OF _____

HOMEOWNER INFORMATION

NAME: _____

ADDRESS: _____

PHONE (W) _____

PHONE (D) _____

GENERAL INFORMATION

YES

NO

1. Has your septic system been failed by a certified inspector?

1a Does your system need to be pumped more than four (4) times per year?

2. Have you had a soil evaluation test and/or engineering plans for your system completed (or in process)?

3. Have you received estimates for engineering work?:
“ “ “ general contractor (installation) work?:

4. Can your property lot lines be determined, so that the proposed septic system and soil adsorption system be located without infringing on your neighbor's property?

5. Are you in an environmental sensitive area? (check plan)

Name of Area _____ No. _____

6. Can you be connected to our communities existing sewerage collection system?

7. If known, please provide information of the type and costs of the repairs?

Needs:

- a. Need new soil absorption system (SAS) ☐
- b. Need entire new system ☐
- c. Need repairs done to parts of system ☐
- d. Want connection to our communities existing sewer system ☐

1. Engineering soil evaluation and design \$ _____

2. Estimated costs of repair, replacement
or connection \$ _____

3. Contingency amount (20%) \$ _____

Total Loan Estimate \$ _____

I, we will agree to sign a betterment/loan agreement with the Town of _____, to pay for the required costs associated with the septic system repair, and am aware that these costs will be treated as a municipal lien on my property tax bill.

This loan is contingent on the Town determining that my property lies within an environmental sensitive area that is deemed to be fundable by the Town for that fiscal year.

Signature: _____ Date: _____
(Property Owner)

Board of Health Use Only:

Project Number _____

Environmental Area Number _____ Env. Area Priority No. _____

Date Accepted _____ Priority List No. _____

Brochure for Homeowners Draft

Introduction

The _____ of _____ Board of Health has received funding approval from the Commonwealth of Massachusetts - Department of Environmental Protection to prepare and administer a septic system repair program.

This program, referred to as the Betterment Loan Program, will enable our community to provide financial assistance to homeowners living in environmentally sensitive areas, whom have failed septic systems.

Through this Program, the engineering and general construction costs associated with connection to an existing sewer main, or replacement or upgrade of a failed septic system can be provided as a low interest loan, to you, the homeowner. The loan will be paid back to the _____ with payment of your real estate tax bill. After reviewing this brochure, should you elect not to participate in this Program, please review another brochure the Board of Health has available. This brochure describes the “Homeowner Septic System Repair Program”, which is a program administered by the Massachusetts Housing Finance Agency (MHFA).

The Betterment Law

Under a revised state law, every town and city in Massachusetts has the option of providing upfront financing for residential cesspool or septic system repairs, replacements or upgrades for failed septic systems. This is done in much the same way many communities currently undertake public works improvements, such as the paving of roads and the installation of sewer or watermain.

The Betterment Law allows a community to create a loan fund, that must be authorized by _____ vote. The loan fund pays for Board of Health approved repairs to septic systems. The Community recovers those costs by assessing annual betterments on those individual homeowners property tax bills whom benefit by the improvement.

Financial Assistance Terms

Financial Assistance consists of a five percent (5%) loan, that you, the homeowner pays back twice a year, with each real estate tax payment. Loan repayment terms may be over 10 or 20 year time periods, depending on costs of the septic system repair.

Loans may be paid back early, without penalty.

Elderly Deferral

Elderly homeowners, with gross incomes of \$20,000 or less, may request a deferred payment loan. This type of loan does not have to be repaid back to our community, until the property is sold or transferred. The authority to have a deferred payment loan program must be specifically approved by _____ vote.

Loans may be paid back early, without penalty.

Community Yearly Program

Each fiscal year, the Board of Health will provide a number of loans to homeowners located in environmentally sensitive areas. The number of homeowners provided loans will be based on available money and the priority of that particular environmental area. Your application will be kept on file, regardless of whether you qualify that particular year. Notice will be provided yearly, of homeowners standing, through the issuance of a priority list.

Priorities of environmentally sensitive areas will be based on environmental concerns, such as the proximity of the failed septic system to our community's water supply, surface waters, wetlands or coastal waters.

General Assistance

Once you have been determined to be eligible for a loan, the Board of Health will prepare a Betterment Loan Agreement for your execution. Upon completion of the loan agreement, the Board of Health is prepared to offer service in one of two ways, in order to complete the project.

You may decide to control the project yourself or with an informed family member. You may select either an engineer for design of the septic system and/or a general contractor to install the septic system improvements from the Board of Health's pre-approved list. All bills incurred for the work are submitted to the Board of Health for payment.

For Further Information

For further information on this program, please contact _____ at () - _____.

Local Septic Management Homeowner Checklist

ENGINEERING SERVICES

Design Questions to Ask an Engineer Prior to Completing a Contract

This check list will assist you, the homeowner, in asking an engineer, whom is proposing to evaluate and design a septic system improvement for you, appropriate questions that should assist you in determining their suitability to perform the work.

A. General Questions

1. Have you performed septic system design work (under the new Title 5 regulations issued by the Commonwealth in 1996) that has been approved by our communities Board of Health or other regulating Department?
2. When was the last year and how many septic systems have you submitted and received approval for by our Board of Health?
3. Do you have a current professional registration (civil or environmental) engineering registration provided by the Commonwealth of Massachusetts Engineering Board of Registration? Can you provide a copy for our records?
4. Will you provide up to three most recent references for your work, from local communities homeowners?
5. Are you insured and do you carry professional liability insurance as required by the Commonwealth of Massachusetts and professional standards, as provided by the American Association of Professional Engineers?

SYSTEM INSPECTOR

B. Initial Location and Inspection of the Septic System

There are numerous septic system inspectors, licensed by the DEP - Commonwealth of Massachusetts. These inspectors are not necessarily engineers, and may be a cost effective alternative to hiring an engineering firm to perform the inspection.

1. We had (or haven't had) our septic system located and inspected. The inspector deemed that the system has failed and under Title 5 criteria, must be replaced.

Will you review this inspection and ensure us that the Commonwealth's Title 5 regulations do indeed, require replacement of the entire system or a part of the system.

2. Our septic system has not been inspected, but we are having problems. Will you locate and sketch out the location and present system design and perform an inspection and provide options for us to consider, as outlined under the Title 5 regulations?
3. Will you or a subcontractor perform the inspection?

ENGINEERING DESIGN OF SEPTIC SYSTEM

C. Design Questions

There are two components of septic system design. The first consists of noting where your property lines may be so that test holes can be dug. These holes will locate your soil adsorption system, which handles the fluid part of septic wastes.

The first part also includes actually digging the test holes with a backhoe, performing a soil examination and 'perc' test and then submitting the results to you, the homeowner and the Board of Health.

This part of design does not have to be performed by a professional engineer, but can be done by a certified soil evaluator (certified by the Commonwealth of Massachusetts). The results of the soil examination are submitted to the Board of Health and You, the homeowner. The homeowner can then submit the results to a chosen registered professional engineering firm for design purposes.

These questions can be asked to either the professional design engineer or a chosen certified soil evaluator.

1. Will you charge us for determining where our property lines are located, or use general field work as determined from meeting with us today, as part of your design estimate?
2. If you cannot determine from our provided plans, or locations of known property bounds, drill holes, stakes or other property line markings, what will be your limits to determine property lines for location of the septic system components and soil adsorption system?

3. How will the soil examination (percolation test) be performed, by you or a subcontractor? Will you be present to show the subcontractor where to dig the holes for location of the soil adsorption system. Does the subcontractor and the heavy machine operator work directly for you, and do they carry the necessary liability insurance?
4. Will they be responsible for calling Dig Safe, if required?
5. Will the dug holes and tractor (tire) damages be filled in, graded and seeded or left in the general construction state of disrepair?
6. When the soil examination is completed, will you submit a copy to us, the Board of Health and our chosen design engineer.
7. How will billing be performed. We may request that billing be performed in the following manner:

Number	Description	Percent of Cost
---------------	--------------------	------------------------

- | | | |
|----|--|-----|
| 1. | Provide a written estimate for all phases of the proposed work : | |
| | Inspection of System | |
| | a. Initial Inspection, location of system and written evaluation | |
| | 1. Inspection and location | 25% |
| | 2. Written and signed evaluation | 75% |

Soil Evaluation and Percolation Testing

- | | | |
|----|--|-----|
| 2. | a. Location of Lot Lines with side line stakes | |
| | b. Onsite backhoe for soil test with successful percolation test and soil examination | |
| | c. Written report and confirmation of submittal to Local Board of Health of certified test | 75% |
| | d. Completion of backyard grading and cleanup | 25% |
| 3. | Engineering Design | |
| | a. Site visit and write up of estimate | |
| | b. Survey work for plan of work | |

- c. Review of soil evaluation test and opinion to us of the type of systems that could be installed, along with price estimates for each one.
- d. Draft plans for review and approval of approved septic system. (We will provide permit fee for submittal to our Board of Health at that time)
- e. Final plans submitted to Board of Health and a bill from you. 60%
- f. Board of Health approves the plan and we receive four copies for our use. Written specifications will be included with plans 40%

4. Engineering Oversight of Construction

- a. Hourly charge for inspection of contractor's work.
- b. Estimate of total time estimated for inspection and maximum costs
- c. Time to provide written change orders on site, to be included with hourly charge.
- d. Billing to be done per inspection, with 10 days to pay.

Local Septic Management Program

Homeowner Checklist

Questions to ask a General Contractor Prior to Agreeing to a Contract

This check list will assist you, the homeowner, in asking a general contractor questions, prior to signing a written agreement, for the improvement or installation of a septic system or a sewage connection.

A. General Questions

1. How many installations have you performed, under the old Title 5 regulations and under the new Title 5 regulations, and, how long have you been in business?
2. How many have been done in our Town/City over the past two (2) years?
3. Would you say the Board of Health and its agent has been satisfied with your work 100% of the time?
4. Are there any septic systems that you have worked on, or are presently working on that has not been completed? If so, why not?
5. How long will it be before you provide a written estimate, if we provide a set of plans and written specifications right now?
6. If your written estimate is submitted, based on our provided plans and written specifications, how long will it be before you show up on the job?
7. Will you break down the pay estimate in phases as outlined below:

Item	Description	% of Total
a.	Submit a written estimate and if accepted, a contract.	
b.	Drop off materials and bring a machine to start digging	
c.	Complete Installation of any required septic system components	

- d. Complete the soil adsorption system
- e. Obtain a successful inspection from the Board of Health 80%
- f. Cover over the system to grade
- g. Seed and loam as required 20%

8. Will you provide us three references of homeowners of your last three jobs?

9. Do you carry insurance? If so, does it consist of:

- a. Property Liability
- b. Vehicle Liability
- c. Workers Comp (unless self employed)

10. How long will our toilets, dishwasher, sinks, etc. be off line (can't be used)?

11. How long will this job take from start until completion?

APPENDIX II

MODEL PLAN - LOCAL SEPTIC MANAGEMENT PLAN

To look at sample plans, please contact your regional coordinator. The regional coordinator should be able to assist you in preparing a septic management plan. Please find contact information of your regional coordinator in Resources section of this manual.

APPENDIX III

DOR BULLETINS / PROGRAM ACCOUNTING

In August 1997, Department of Revenue forwarded guidance on Accounting for Community Septic Management Program to the Town officials, such as, Accountants, Treasurers, Selectmen, Mayors etc. This guidance was distributed to each and every Community in the Commonwealth. If for some reason, your Community needs additional copies of this memorandum, it can be obtained by either contacting Division of Local Services, your regional coordinator or the following web page.

<http://www.magnet.state.ma.us/dls/bullidx.htm>

Information on Title 5 Tax Credits and other valuable information on Municipal Finance can be found at Department of Revenue / Division of Local Services web sites.

APPENDIX IV
FORMS: PAYMENT REQUISITION FORM T5-1000
QUARTERLY REPORTS